FILE COPY

RECORD

UNITED STATES

UNITED STATES COURT OF

SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1959

No. 55

UNITED STATES, PETITIONER

vs.

ALLEN KAISER

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

INDEX

516748—59——1

1 In the United States Court of Appeals for the Seventh Circuit

Appendix to Appellant's Brief—Filed May 29, 1958

United States District Court—Eastern District of Wisconsin

Civil Action No. 56-C-162

ALLEN KAISER, PLAINTIFF

vs.

UNITED STATES OF AMERICA, DEFENDANT

Complaint

The above named plaintiff, by Max Raskin, his attorney, alleges as follows:

1. Plaintiff, Allen Kaiser, is a citizen of the State of Wisconsin, and resides at 1710 North 9th Street, in the city and county of Sheboygan, state of Wisconsin,

2. Upon information and belief, on or about the 1st day of July, 1953, George M. Reisimer became the duly appointed, qualified and acting District Director of the Internal Revenue Department for the District of Wisconsin, and has continued to act as such during all of the times hereinafter mentioned.

3. This action is brought against the defendant, United States of America, pursuant to Title 28, U.S. Code 1346 as amended July 30th, 1954, and Section 74.22 of the Internal Revenue Code of 1954.

4. This action arises under the laws of the United States providing for internal revenue as hereinafter more fully appears.

5. On or about the 15th day of April, 1955, plaintiff filed an income tax return for the taxable year 1954, with the office of the Director of Internal Revenue of the United States, for the District of Wisconsin, showing income tax withheld

2 in the sum of $388.84; a tax liability in the sum of $359.00, and claiming a refund in the sum of $29.84.

6. Thereafter, and on or about the 17th day of February, 1956, the Director of Internal Revenue of the United States, for the District of Wisconsin, filed a report of individual income tax audit changes, Form 1902, increasing the alleged

income of the plaintiff in the amount of $565.54 and correcting the adjusted gross income to $3,235.02, and further, showing and income tax due for the year 1954 in the amount of $467.00, or an additional tax over and above the amount already withheld and paid, in the amount of $108.00; copy of such Form 1902 is attached hereto and made a part hereof as if more fully set forth herein, and marked Exhibit A.

7. On the 24th day of July, 1956, pursuant to the demand made by the Director of Internal Revenue of the United States for the District of Wisconsin, plaintiff caused to be paid the sum of $108.00 claimed as additional tax due, plus interest in the amount of $8.27, or a total of $116.27.

8. Thereafter, and on or about the 30th day of July, 1956, and within the period in which a claim might be legally filed under Section 6511 of the Internal Revenue Code of 1954, the plaintiff, pursuant to the provisions of the Internal Revenue Code and the regulations of the Secretary of the Treasury in regard thereto, presented and delivered to the said George M. Reisimer, District Director of the Internal Revenue Department of the United States for the District of Wisconsin, his claim for refund on Form 843, for taxes in the amount of $108.00 plus interest in the amount of $8.27, or a total of $116.27, erroneously paid for the year 1954; copy of such claim for refund is attached hereto and made a part hereof as if more fully set forth herein, and marked Exhibit B.

3 9. Thereafter the said District Director of the Internal Revenue Department of the United States for the District of Wisconsin, notified plaintiff by registered letter that said claim for refund had been disallowed in full; copy of said registered letter with Form 1904 is attached hereto and made a part hereof as if more fully set forth herein, and marked Exhibit C.

10. Plaintiff alleges that for the taxable year 1954 there was erroneously included as taxable income in his tax return as corrected by the said District Director of Internal Revenue for the said year, certain gifts received from International Union, United Automobile, Aircraft & Agricultural Implement Workers of America, UAW, and from Local Union 833 UAW affiliated with said International Union, or other sundry sources, the total sum of $565.54, and he erroneously paid and there was erroneously collected from him a tax thereon in

the sum of $108.00 plus interest in the sum of $8.27, or a total of $116.27.

11. Plaintiff alleges that said gifts did not constitute taxable income under the provisions of Section 102 of the Internal Revenue Code of 1954.

12. By reason of the disallowance and rejection of said claim for refund by the said District Director of Internal Revenue or by the failure of the Commissioner of Internal Revenue to refund said money erroneously paid and collected, the defendant refused and still refuses to refund said amount of $116.27 to the plaintiff.

13. The above mentioned assessment was erroneously made and illegally exacted from the plaintiff for the reasons set forth in said claim for refund.

Wherefore plaintiff demands judgment against the defendant in the sum of $116.27 with interest thereon from the
4 24th day of July 1956, the date of payment of said tax, together with the costs and disbursements of this action.

(S) Max Raskin,
MAX RASKIN,
Attorney for Plaintiff,
Suite 1805, Wisconsin Tower Building,
606 West Wisconsin Avenue, Milwaukee, Wis.

5 *Exhibit A to Complaint*

Form 1040 (Rev. 1-50) U.S. Treasury Department - Internal Revenue Service
NOT OFFICIAL INCOME TAX AUDIT CHANGES

Name and Address of Taxpayer	Filing District	Date of Report
Allen Kaiser 227 Georgia Ave. Chattanooga, Tenn.	Nashville	4/11/55
	Date Claim Filed	Year ended (or period) 12/31/53
	Examining Officer L. Folsom	

Type of Return X Separate ___ Joint ___ Head of Household		Form No. 1040
Adjusted Gross Income Shown on Return		$ 3679.18
2. Increase in Income		515.82
3. Corrected adjusted gross income		3835.00
4. Tax (with 1 allowable exemption)		467.00
5. Less: A. Dividends received credit		
B. Retirement income credit		
C. Other allowable credits if deductions itemized		
6. Balance (line 4 less sum of items in line 5)		467.00
7. Plus: Self-employment tax shown on return as corrected		
8. Total corrected income tax liability		467.00
9. Total tax shown on return		359.00
10. Statutory deficiency or difference between lines 8 and 9		108.00

6

SCHEDULE A (continued)

COMPUTATION OF ADDITIONAL TAX AND/OR OF NET OVERASSESSMENT

	Shown on return		As corrected	
11. Total income tax liability		$ 359.00		$ 142.00
12. Less and adjustments				
A. Income tax withheld	$ 351.84		$ 351.84	
B. F.I.C.A. tax credit				
C. Payments on estimated tax				
D. Previous assessments				
E. Sum of lines A through D	351.84		351.84	
F. Deduct previous overassessment and/or credits	29.84	359.00	29.84	359.00
13. Additional tax due		none		158.00
14. Penalty, if any, as explained on reverse				

For explanation of adjustments see reverse

(Reverse side of Exhibit 4)

Information on file in this office discloses you received strike benefits in the amount of $615.84 during the year 1954. Such benefits constitute income, subject to tax, as defined in Section 61 (a) of the Internal Revenue Code of 1954. Accordingly, the income reported by you has been increased to include the above amount.

7 *Exhibit B to Complaint*

Form 843
(Rev. June 1955)

CLAIM

TO BE FILED WITH THE DISTRICT DIRECTOR WHERE ASSESSMENT WAS MADE OR TAX PAID

District Director's Stamp
Date received

The District Director will indicate in the block below the kind of claim filed, and fill in, where required

- ☐ Refund of Taxes Illegally, Erroneously, or Excessively Collected
- ☐ Refund of Amount Paid for Stamps Unused, or Used in Error or Excess
- ☐ Abatement of Tax Assessed (not applicable to estate, gift, or income taxes)

EXHIBIT B.

PLEASE TYPE OR PRINT PLAINLY

Name of taxpayer or purchaser of stamps
Allen Kaiser

Number and street: 1710 North 9th Street. City, town, postal zone, State: Sheboygan, Wisconsin

1. District in which return (if any) was filed: Wisconsin

2. Name and address shown on return, if different from above:
Allen Kaiser
827 Georgia Avenue
Sheboygan, Wisconsin

3. Period - If the tax involved is annual taxes, prepare separate form for each taxable year: From Jan. 1st, 19 56 To Dec. 31st, 19 56

4. Kind of tax: Income

5. Amount of overassessment: $ 467.00

Dates of payment: July 26th, 1956

6. Date stamps were purchased from the Government: —

7. Amount to be refunded: $108.00 plus interest; or a total of $116.27

8. Amount to be abated (not applicable to income, estate, or gift taxes): $ —

9. The claimant believes that this claim should be allowed for the following reasons:

Taxpayer claims that the relief and assistance given him by the International Union, the Local Union, or other sources by reason of his unemployment in connection with the Kohler strike, is not income and not taxable under the law.

Use reverse if space is not sufficient.

I declare under the penalties of perjury that this claim (including any accompanying schedules and statements) has been examined by me and to the best of my knowledge and belief is true and correct.

Signature /s/ Allen Kaiser

Dated July 27, 19 56

INSTRUCTIONS

1. The claim must set forth in detail each ground upon which it is made and facts sufficient to apprise the Commissioner of the exact basis thereof.

2. If a joint income tax return was filed for the year for which this claim is filed, both husband and wife must sign this claim even though only one had income.

3. Whenever it is necessary to have the claim executed by or signed on behalf of the taxpayer, an authenticated copy of the document specifically authorizing such agent to sign the claim on behalf of the taxpayer shall accompany the claim.

4. If a return is filed by an individual and a refund claim is thereafter filed by a legal representative of the deceased, certified copies of the letters testamentary, letters of administration, or other similar evidence must be submitted to the claim, to show the authority of the executor, administrator, or other fiduciary by whom the claim is filed. If an executor, administrator, guardian, trustee, receiver, or other fiduciary files a return and thereafter refund claim is filed by the same fiduciary, documentary evidence to establish the legal authority of the fiduciary need not accompany the claim, provided a statement is made on the claim showing that the return was filed by the fiduciary and that the latter is still acting.

5. Where the taxpayer is a corporation, the claim will be signed with the corporate name, followed by the signature and title of the officer having authority to sign for the corporation.

8 *Exhibit C to Complaint*

U. S. TREASURY DEPARTMENT
Internal Revenue Service
District Director
Milwaukee 1, Wis.

In reply refer to
CCL:AC:CL
No. 349

August 6, 1956

REGISTERED MAIL

Allen Kaiser
1710 N. 9th Street
Sheboygan, Wisconsin

Dear Mr. Kaiser:

In re: Claim for refund of
Type of Tax: Income
Amount: $106.00 plus int.
Period: 1954

Careful consideration has been given to your claim as described above, and upon the facts and circumstances in the case it has been determined that it is not allowable. Accordingly, your claim has been disallowed in its entirety.

In accordance with the provisions of Section 3772 (a) (2) of the Internal Revenue Code of 1939 and Section 6532 (a) (1) of the Internal Revenue Code of 1954, this notice of disallowance in full of your claim is hereby given by registered mail.

By direction of the Commissioner.

Very truly yours,

/s/ Geo. Kaiser

Geo. Kaiser
District Director

Hill:er
Encl. Form 1904

FL-1064

9

Exhibit C

RD CHARK REPORT

Name and address on latest return enclosed (or present name and address if different)	Date of report
Allen Kaiser 1710 N. 9th Street Sheboygan Wisconsin	August 6, 1956
District Director of Internal Revenue Wisconsin	Field ✓ Office ✓ Complete Partial Place of audit Milwaukee, Wisconsin Return form No. 1040

Related Cases

None

It is recommended that the return(s) indicated below be accepted as previously adjusted since examination establishes that further action would not result in a material change in tax liability. The following amounts of income and tax liability are reflected in the return(s) recommended for acceptance:

Year ended (or period)	Adjusted gross income as previously adjusted	Tax liability as previously adjusted
December 31, 1954	$3235.08	$67.00

Explanation of unusual items

The claim dated July 27, 1956, and received July 31, 1956, omitting strike benefits from [illegible] has been rejected for the reason that such benefits constitute income, subject [illegible], as defined in Section 61(a) of the Internal Revenue Code of 1954.

Enclosures

None

Examining Officer	Approved by (Signature of reviewer)
/s/ Curtis C. Redburn Curtis C. Redburn	/s/ R. W. Irons

U.S. Treasury Department - Internal Revenue Service Form 1804 (Rev. 4-55)

10 In the United States District Court

Answer

The defendant, the United States of America, by its attorney, Edward G. Minor, United States Attorney for the Eastern District of Wisconsin, for answer to the complaint herein states:

1. The allegations contained in paragraph 1 of the complaint are admitted.

2. The allegations contained in paragraph 2 of the complaint are admitted.

3. The allegations contained in paragraph 3 of the complaint are admitted.

4. The allegations contained in paragraph 4 of the complaint are admitted.

5. The allegations contained in paragraph 5 of the complaint are admitted.

6. The allegations contained in paragraph 6 of the complaint are admitted.

7. The allegations contained in paragraph 7 of the complaint are admitted.

8. For answer to the allegations contained in paragraph 8 of the complaint, defendant admits that Exhibit B referred to therein is a copy of plaintiff's claim for refund of the tax and interest sought to be recovered in this action, but defendant specifically denies the allegations contained in that refund claim which are not either specifically admitted or denied herein.

Further answering the allegations contained in paragraph 8 of the complaint, defendant denies that the additional income tax of $108 and interest thereon of $8.27, totalling $116.27 referred to therein was erroneously assessed, collected, or paid; and defendant denies that plaintiff is entitled to any recovery whatsoever in this action.

11 9. The allegations contained in paragraph 9 of the complaint are admitted.

10. For answer to the allegations contained in paragraph 10 of the complaint the defendant admits that the District Director of Internal Revenue referred to therein included as taxable income in plaintiff's tax return as corrected by said Director for the taxable year 1954, the total sum of $565.54 received by plaintiff in that year from International Union,

United Automobile, Aircraft & Agricultural Implement Workers of America, UAW, and from Local Union 833 UAW affiliated with said International Union, or other sundry sources, but the defendant specifically denies that said amounts totalling $565.54 were gifts; and specifically denies that said amounts were erroneously included as taxable income in plaintiff's tax return as corrected by the said District Director of Internal Revenue for that year.

Further answering the allegations contained in paragraph 10 of the complaint, the defendant specifically denies that plaintiff erroneously paid and that there was erroneously collected from him a tax in the amount of $108.00 plus interest in the sum of $8.27, or a total of $116.27, upon the amounts of $565.54 received by plaintiff in the taxable year 1954 from the sources described in paragraph 10 of the complaint.

11. For answer to the allegations contained in paragraph 11 of the complaint, the defendant specifically denies that the amounts referred to therein totalling $565.54, which plaintiff received in the taxable year 1954 from the sources described in paragraph 10 of the complaint herein, were gifts within the meaning of Section 102 of the Internal Revenue Code of 1954,

12 and defendant also specifically denies that said amounts are excludable from plaintiff's taxable gross income under the provisions of Section 102 of the Internal Revenue Code of 1954.

12. The allegations contained in paragraph 12 of the complaint are denied, except defendant admits that it has refused and still refuses to refund the plaintiff the sum of $116.27 sought to be recovered in this action.

13. The allegations contained in paragraph 13 of the complaint are denied, and defendant specifically further denies each and every allegation contained in plaintiff's claim for refund referred to therein not hereinbefore either specifically admitted or denied.

Wherefore defendant prays that the complaint herein be dismissed and that judgment be entered against the plaintiff and in favor of the defendant, and that defendant recover its costs incurred in defending this action.

(S) Edward G. Minor,
EDWARD G. MINOR,
United States Attorney.

In the United States District Court

Stipulation of facts

Mr. RASKIN. Your honor, the attorneys for the Government and for the plaintiff have entered into a joint stipulation which we ask to be marked as "Exhibit A."

The COURT. She uses numbers.

Mr. RASKIN. The reason we wanted alphabetical design is because there is reference in the stipulation itself to exhibits which are attached and marked by number.

The COURT. Then will you mark this "A"?

Exhibit A is received by joint request.

I believe that this Stipulation of Fact should be read to the jury, and if counsel believe now is the time I will ask the Clerk to read it to the jury.

Mr. RASKIN. We have no objection to it being read now.

The COURT. Mr. Clerk, will you take the witness stand and read the Stipulation slowly enough so the jury will understand it?

Mr. QUICK. Will the court ask the jury to indicate if they don't hear, any one of them?

The COURT. Members of the Jury, in case any of you do not hear, just raise your hand and I will ask the Clerk to talk louder.

I want to again tell you that the facts stipulated to by the parties are binding upon you. The conclusions that you come to from those facts will be yours, and counsel will probably argue to you as to what conclusion you should come to, but whatever is in this stipulation is absolutely binding so far as the fact is concerned.

Now, if you will, listen to this stipulation; and, if you will, read it distinctly, Mr. Goldberg.

(Whereupon the Deputy Clerk took the stand and read the Stipulations of Facts in words and figures as follows, to-wit:)

"ALLEN KAISER, PLAINTIFF

vs.

UNITED STATES OF AMERICA, DEFENDANT

"Stipulation of facts for presentation to jury

"It is hereby stipulated and agreed by the parties hereto, through their respective attorneys, that the facts herein stated are true and the documents referred to herein or annexed hereto as exhibits are true copies of the originals and/or true excerpts from the original documents from which such excerpts were taken, and may be admitted in evidence without further authentication, except that each party reserves the right to object to the admissibility in evidence of the documents and facts herein related, and the excerpts from the documents herein referred to, on the grounds of their immateriality and irrelevancy to the issue involved herein. In addition, each party reserves the right to offer in evidence other documents and additional evidence not inconsistent with the facts herein admitted to be true, subject, however, to an objection to their admissibility on the grounds of immateriality and irrelevance.

"1. This is a cival action whereby the plaintiff is seeking a refund of individual income tax in the amount of $108.00 plus interest thereon of $8.27, making a total of $116.27, paid by him on July 24, 1956, to the then District Director of Internal Revenue of the United States for the District of Wisconsin.

"2. This action is brought under the provisions of Title 28 U.S.C., Sec. 1346, as amended by July 30, 1954, and pursuant to Section 7422 of the Internal Revenue Code of 1954, and arises under the laws of the United States of America providing for internal revenue.

"3. Plaintiff was at the time he paid the income tax sought to be recovered herein and is now a citizen of the State of Wisconsin and resides at 1710 North 9th Street in the City and County of Sheboygan, Wisconsin.

"4. On or about the 15th day of April, 1955, plaintiff filed with the office of the District Director of Internal Revenue for the District of Wisconsin, his federal income tax return for the calendar year 1954, showing an income withheld in the sum of $388.84; an admitted tax liability of $359.00, and claiming therein a refund of the sum of $29.84"

15 Mr. RASKIN. If the court please, I think the Clerk left out the word "tax"—"Income tax" rather than "an income withheld."

The COURT. Will you read that over correctly?

The DEPUTY CLERK. "On or about the 15th day of April, 1955, plaintiff filed with the office of the District Director of Internal Revenue for the District of Wisconsin, his federal income tax return for the calendar year, 1954, showing an income tax withheld in the sum of $388.84; an admitted tax liability of $359.00, and claiming therein a refund of the sum of $29.84.

"5. After investigation and audit of plaintiff's income tax return for the calendar year 1954, the District Director of Internal Revenue for the District of Wisconsin, on or about February 17, 1956, filed a report of individual income tax audit changes on Treasury Department Form 1902, wherein he increased plaintiff's taxable income in the amount of $565.54, thereby correcting his adjusted gross income to $3,235.02, which adjustment increased plaintiff's income tax liability for the year 1954 to $467.00, and resulted in an additional income tax of $108.00 over and above the amount withheld and paid by him for the taxable year 1954.

"The explanation of the adjustment to plaintiff's taxable income for 1954 stated on Form 1902 read as follows:

> "'Information on file in this office discloses you received strike benefits in the amount of $565.54 during the year 1954. Such benefits constitute income, subject to tax, as defined in Section 61(a) of the Internal Revenue Code of 1954. Accordingly, the income reported by you has been increased to include the above amount.'

"6. On July 31, 1956, plaintiff filed a timely claim for

16 refund of the income tax sought to be recovered herein.

In his claim for refund, plaintiff stated that it should be allowed for the following reasons, to-wit:

> "'Taxpayer claims that the relief and assistance given him by the International Union, the Local Union, or other sources by reason of his unemployment in connection with the Kohler strike, is not income and not taxable under the law.'

"7. Under date of August 6, 1956, plaintiff was informed by the office of District Director of Internal Revenue for the District of Wisconsin, that his claim for refund, above men-

tioned, was rejected for the reason that the strike benefits received by him in 1954 constituted income subject to tax, as defined in Section 61(a) of the Internal Revenue Code of 1954; and under that same date there was dispatched to plaintiff, in accordance with the requirements of Section 3772(a)(2) of the Internal Revenue Code of 1939 and Section 6532(a)(1) of the Internal Revenue Code of 1954, a registered notice of disallowance in full of his claim for refund. This suit being instituted on August 8, 1956, was, therefore, timely filed,

"8. In 1954 and prior thereto plaintiff was an employee of the Kohler Company at Sheboygan, Wisconsin, and in 1954 he worked on the water test line at the pottery, at a wage of $2.16 an hour.

"9. On February 23, 1954, the Kohler Company of Sheboygan, Wisconsin, entered into a written agreement with the International Union, UAW CIO, and its Local Union 833, also of Sheboygan, Wisconsin, excerpts from which are attached hereto and marked Exhibit I and made a part hereof."

The COURT. Do counsel want the exhibit read at this point, so that the jury follow it better?

Mr. RASKIN. If the exhibits are going to be read, I think they ought to be read where they are referred to.

The COURT. Make a note of your place and read Exhibit I attached.

17 The jury will understand what is now going to be read are excerpts from the contract. Counsel have taken the contract and eliminated the portions that they did not feel material, and parts that are going to be read are the parts that both counsel thought were material to the outcome of this case.

The DEPUTY CLERK. I take it Exhibit I is the first page following the signatures?

Mr. RASKIN. Yes.

The DEPUTY CLERK:

"EXHIBIT I

"Excerpts From the Agreement Between Kohler Company and the U.A.A.A.I.W.A., C.I.O. and its Local 833 February 23, 1953

"Article I—Union recognition and activities

"Section 1. Recognition:

"The Company, accepting the results of the election conducted by the National Labor Relations Board June 10–11,

1952, recognizes the Union as the sole collective bargaining agency in all matters pertaining to wages, hours and working conditions, for all production and maintenance employees in the bargaining unit as defined by the National Labor Relations Board in its decision of February 26, 1951, in Case No. 13 R.C. 1506 (93 NLRB 398). The specific job classifications included in and excluded from the bargaining unit are as specified in Supplement 'A' hereof."

Is that "A" here somewhere?

Mr. RASKIN. No.

The DEPUTY CLERK. "When the words 'he,' 'him,' or 'his' are used in this agreement, they shall refer to and mean both male and female employees.

18. "Section 3. Limitation or Interruption of Production

"(b) The Union will not cause, encourage or support any sitdown strike, any slow down, or any reduction or any limitation of production, and during the life of this contract will not cause, encourage or support any strike because of any dispute which is subject to the arbitration procedure provided by this agreement. Any employee engaging in conduct violating this provision shall be subject to discipline by the Company.

"Article XVIII—general provisions

"Section 3. Waiver:

"The parties acknowledge that during the negotiations which resulted in this agreement each had the unlimited right and opportunity to make demands and proposals with respect to any subject or matter not removed by law from the area of collective bargaining.

"Therefore, the Company and the Union for the life of this agreement, except as provided in section 2 of this article, each voluntarily and unqualifiedly waives the right, and each agrees that the other shall not be obligated, to bargain collectively with respect to any subject or matter referred to or covered in this agreement or with respect to any subject or matter not specifically referred to or covered in this agreement, even though such subject or matter may not have been within the knowledge or contemplation of either or both of the parties at the time that they negotiated or signed this agreement.

19 *"Article XIX—effective period*

"This Agreement shall become effective when signed by the parties hereto and ratified by the Local union membership and approved by the International Executive Board of the Union.

"This contract will remain in full force and effect until March 1, 1954, and thereafter from year to year unless sixty (60) days prior to March 1, 1954, or sixty (60) days prior to any March 1 of any year thereafter, the Company notifies the Union or the Union notifies the Company of its desire to terminate or change the contract, in which case the contract shall terminate sixty (60) days after such notice unless further extended by mutual agreement of the parties."

The COURT. Is that all of the exhibit?

The DEPUTY CLERK. That's Exhibit I.

The COURT. Then you might go back to the stipulation.

The DEPUTY CLERK. "10. Early in December, 1953, the Kohler Company advised the International Union, UAW-CIO, and its Local Union 833, of its intention to terminate the contract of February 23, 1953. The contract expired on March 1, 1954, and the parties operated without a contract between March 1, 1954 and April 5, 1954.

"11. On March 4, 1954, the Kohler strike was authorized by the members of Local Union 833, and became effective on April 5, 1954.

"12. At the time the Kohler strike was authorized the plaintiff herein was an employee of the Kohler Company at Sheboygan, Wisconsin, but he was not a member of the International Union and did not join that Union until August 19, 1954.

"13. Annexed hereto as Exhibit w and made a part

20 hereof are excerpts from the Constitution of the International Union UAW-CIO, adopted in March 1953, which was in effect in 1954 as the time plaintiff applied for membership in the Union."

The COURT. Read the exhibit.

The DEPUTY CLERK:

"EXHIBIT 2

"Re: ALLEN KAISER *v.* UNITED STATES, DC ED Wis. Civil No. 56–C–162

"Excerpts From Constitution of International Union Dated March 1953

"1953

"Article 1—Name

"The Organization shall be known as the 'International Union, United Automobile, Aircraft and Agricultural Implement Workers of America (UAW–CIO), hereinafter referred to as the International Union.

"Article 2—Objects

"Section 1. To improve working conditions, create a uniform system of shorter hours and higher wages; to maintain and protect the interests of workers under the jurisdiction of this International Union.

"Section 2. To unite in one organization, regardless of religion, race, creed, color, political affiliation or nationality, all employees under the jurisdiction of the International Union.

"Section 3. To improve the sanitary and working condition of employment within the factory, and in the accomplishment of these necessary reforms we pledge ourselves to utilize the conference room and joint agreements; or if these fail to establish justice for the workers under the jurisdiction of this International Union to advocate and support strike action.

"Article 12—Duties of the International Executive Board

"Section 1. The International Executive Board shall execute the instructions of the International Convention and shall be the highest authority of the International Union between Conventions, subject to the provisions of this Constitution, and shall have the power to authorize strikes, issue charters and punish all subordinate bodies for violation of this Constitution.

"Section 15. If and when a strike has been approved by the International Executive Board, it shall be the duty of the

International Executive Board to render all financial assistance to the members on strike consistent with the resources and responsibilities of the International Union.

"1953

"Article 16—Initiation fees and dues

"Section 4. The Local Union shall set aside five cents (.05) of each month's dues payment as a Special Citizenship Fund to be used for the purpose of strengthening democracy by encouraging members, and citizens generally, to register and vote in community, state and national elections and to carry on organizational and educational programs directed towards the achievement of an ever higher understanding of citizenship responsibility and the need for active participation in the affairs of a free and democratic society. Local Unions
22 are obligated to carry out such programs in conjunction with city, county, and state CIO Councils. Five cents (.05) of each month's dues payment must be laid aside by the Local Union as a special fund to be used in case of strike or lockout. Three cents (.03) of each month's dues payment must be laid aside by the Local Union as a special fund to be used only for educational or recreational purposes as outlined in Article 26 of this Constitution.

"Section 11. All Local Unions shall pay to the International Union a per capita tax of one dollar and twenty-five cents ($1.25) per month per dues-paying member, twenty-five cents (.25) of which shall be set aside in a special fund as the International Union Strike Fund, to be drawn exclusively for the purpose of aiding Local Unions engaged in authorized strikes and in cases of lockout, and for that purpose only, and then only upon a two-thirds vote of the International Executive Board. * * *

"Section 13. All per capita taxes, and all other monies collected for the International Union shall be transmitted to the International Secretary-Treasurer by the twentieth of each month following collection. All such per capita taxes and other monies are strictly the property of the International Union and in no case shall any part thereof be used by Local Unions, except upon permission of the International Executive Board.

"Article 49—Strikes

"Section 1. Whenever any difficulty arises within the jurisdiction of any Local Union within the shop involved, between its members and any employer or employers, growing out of reduction in wages, lengthening of hours of labor, or other
23 grievances incident to the conditions of employment, or whenever any Local Union desires to secure for its members an increase in wages, a shorter work day or other changes in the conditions of employment, the Local Union involved shall call a meeting of all members to decide whether the proposed changes shall be accepted or rejected. The majority vote of those present and voting on the question shall decide. If, as a result of this decision, a strike vote is decided upon, the Local Union Executive Board shall notify all members, and it shall require a two-thirds vote by secret ballot of those voting to declare a strike. Only members in good standing shall be entitled to vote on the question of declaring a strike.

"Section 5. Before a strike shall be called off, a special meeting of the Local Union shall be called for that purpose, and it shall require a majority vote by secret ballot of all members present to decide the question either way. Wherever the International Executive Board decides that it is unwise to longer continue on existing strike, it will order all members of Local Unions who have ceased work in connection therewith to resume work and thereupon and thereafter all assistance from the International Union shall cease.

"Section 6. Any Local Union engaging in a strike which is called in violation of this Constitution and without authorization of the International President and/or the International Executive Board shall have no claim for financial or organizational assistance from the International Union or any affiliated Local Union."

* * * * * *

"14. Plaintiff was not present at the meeting of the Union when the strike vote was taken. Plaintiff was on strike at the time he was admitted to membership in the Union; and, during the calendar year 1954, beginning with May 4th,
24 1954, he received from the International Union, strike benefit payments totaling $565.54 and at least up to April 6, 1957, he continued to receive strike benefit payments from the Union.

"15. Plaintiff did not pay any initiation fee upon becoming a member of the International Union, and because of his unemployment status has not paid any dues as a member thereof.

"16. At the time of the declaration of the Kohler strike the International Union had $9,141,488.00 in its strike fund; and Local Union 833 had in its strike fund $63,677.88, which latter amount was transferred by it to the International Union in that year, and was set up in a special bank account to deal with strike expenditures and strike needs of Kohler workers.

"17. At the Fifteenth Constitutional Convention of the International Union, UAW–CIO, there was adopted a resolution No. 26, relating to the support of Union members on strike, an excerpt from which is annexed hereto as Exhibit 3, and made a part hereof."

The COURT. Read Exhibit 3.

The DEPUTY CLERK:

"EXHIBIT 3

"Excerpts From Resolution No. 26 Adopted at the 15th Constiutional Convention of the International Union UAW–CIO in March 1955

"Resolution No. 26—Support of members on strike

"Whereas the UAW–CIO believes in peaceful collective bargaining. It is our aim to reach reasonable agreements through peaceful negotiations, without resort to the strike weapon since we are well aware that the effects of a strike are felt not only by the employer, but preeminently by the workers themselves, and in lesser degree by the general public.

"CIO unions do not lightly decide to strike, or engage in walkouts for frivolous nor minor reasons. We do not strike until every other legitimate means of arriving at a satisfactory settlement has been exhausted.

"In the final analysis, however, a strike is, in many situations, the workers' only weapon—and recourse to it their only hope of winning decent wages, hours, and working conditions.

"Unfortunately many of our brothers and sisters are still forced to resort to strike action because employers are unwilling to settle disputes on their merits preferring, instead, to use raw, economic force.

* * * * *

"*Resolved*, That this Convention go on record in support of our brothers and sisters now on strike, and that we resolve to give them every legitimate kind of assistance toward the successful conclusion of their struggle. We must secure as broad a support as is possible for these members, and members who may walk future picket lines; and be it finally

"*Resolved*, That we go on record in censure of any and all employers who seek to deprive workers of decent contract standards by resorting to the law of the jungle."

* * * * *

"18. On March 6, 1952, the International Union UAW-CIO, issued a printed Administrative Letter numbered 8, to all Local Unions, affiliated with it, wherein it stated the International Union's policy in respect to the use of Union funds during strike periods. Annexed hereto as Exhibit 4, and made a part hereof, are excerpts from that letter.

26 "There has been no variation in the basic principles contained in this administrative letter."

* * * * *

"EXHIBIT 4

"Excerpts From UAW-CIO Administrative Letter No. 8, Dated March 6, 1952

"*To all local Unions*

* * * * *

"The handling of the emergency health and welfare problems of our members and their families is one of the most important tasks facing our Union during strike periods. We should do everything possible to minimize the hardship of our members and their families during strike periods by using the resources of the community and our Union.

"The International Union, UAW-CIO, has established a Community Services Program in order to assist our members in making full use of community services. These health and welfare agencies have been organized in the community to render services, including financial assistance, medical, hospital and nursing care, legal aid, unemployment compensation (in New York State), family and child care and other such services. These services can be used by our members during strike periods as well as in lay-off periods. Our members support

and pay for such services through taxes for Federal, state and local public agencies and through contributions for voluntary community agencies.

"The International Union, UAW–CIO, has also established a Strike Fund to further assist Local Unions in winning current strikes and to build a fund to protect our members in any future strikes. The Strike Fund of the International Union, UAW–CIO, is not large enough to provide strike assistance on the basis of right, and is not sufficient to meet all of the needs of our members during strike periods.

"The Strike Fund of the International Union, UAW–CIO, is maintained by setting aside 25 cents per month per member from the per capita taxes received. On an annual basis, each member contributes $3.00 to the Strike Fund. It should be obvious to anyone that it is impossible to build an adequate Strike Fund to take care of all of the needs of our members with these limited funds.

* * * * * *

"* * * the International Executive Board, at its meeting at Detroit, Michigan, on February 5, 1952, adopted the following policy:

"1. All Local Unions must use the services offered by the community agencies in rendering financial assistance, medical, hospital, nursing care, legal aid and other such services before using Local Union Strike Funds of the International Union Strike Funds.

"2. Local Union Strike Funds can only be used in conformity with the policies of the International Union.

"3. Assistance may be given by the Local Union to its members at the beginning of the third week of the strike. In extreme emergencies, the Regional Director may authorize strike assistance before the beginning of the third week.

"4. The International Unions will supplement Local Union Strike Funds after the Local Unions have expended 75 per cent of their funds in accordance with these stated policies; or, in Amalgamated Local Unions, after the Unit on strike has expended 75 percent of its proportional share of the Local Union Strike Fund.

"5. Emergency strike assistance may be given to strikers who cannot meet their minimum needs with their own individual resources, who cannot qualify for such as-

28 sistance from community agencies. Local Unions requiring strike assistance from the International Union must make their application for assistance to their Regional Director. * * *"

* * * * *

"19. The International Union grants strike benefits to non-members of the Union, who participate in a strike, if they do not have sufficient income to purchase food or to meet an emergency situation. The Union treats such non-members on the same basis as members of the Union, but non-members as well as members must be strikers before they may receive assistance from the Union.

"In order to obtain strike benefits from the Union, each applicant must appear before a Union Counsellor who asks him a series of questions which are contained on a printed Counselling form.

"A true copy of the Counselling Form which was prepared by the Union's Counsellor in respect to the application of the plaintiff, Allen Kaiser, for strike benefits, has been identified in the record as plaintiff's Exhibit 3.

"20. The Union makes a distinction between applicants in granting strike benefits to them, depending on their marital status and number of dependents. At the time the Kohler strike aid program began, a single person received a food voucher for $6.00 per week; a married couple without dependents received a food voucher for $10.00 a week; a married couple with two children, a food voucher for $13.85 a week. On June 28, 1954, the Union increased the amount of aid to the people on the Kohler strike: aid for a single person was increased to $7.50 a week; for a married couple without dependents aid was increased to $15.00 a week; aid for a married couple with one child was increased to $18.00 a week.

29 "21. Allen Kaiser voluntarily arrived at the decision to become a member of the union."

TRANSCRIPT OF PROCEEDINGS

ALLEN KAISER called as a witness on behalf of plaintiff.

Direct Examination by Mr. RASKIN:

My name is Allen Kaiser and I live at 1710 North 9th Street, in Sheboygan. I have lived in Sheboygan for 12 years. At present I am employed by the Levitan Fruit Company. I

am 29 years old, married and have 2 children. I married a widow who had the children at the time of the marriage. The children are seven and eleven years old.

I worked for the Kohler Company two years before 1954. I was on the Water Test Line in the Pottery Department.

I did not become a member of Local 833 while I was working for the Kohler Company.

On April 5, 1954, I walked out with the other members on strike. I was not a member of the Union then.

I had no other income at the time or following, after becoming a striker.

I had no other job and was not employed at all. I was in need of assistance so that I could pay rent, and buy food, and I went down to the Union. Not being a member I took a chance in trying and they gave me the assistance that was needed. They did not in any way discriminate because I was not a member.

At the beginning I got food and had my room rent paid. The assistance increased sometime later. I became a member of the Union in August, 1954. No one asked me to become a member.

That is my signature on Plaintiff's Exhibit No. 1, which is an official application for membership, dated August 19, 1954. I got this card at the Union office. I did not pay any money for initation fee or Union dues.

During the year 1954 I did some picketing. I went down to the plant and joined the fellows—stayed there a few hours and went home. No one asked me to do that. I arrived at that decision all by myself.

Cross-examination by Mr. ATHERTON:

I am now a member of the Union.

I never was actually approached in the plant on the subject of joining the Union, so after the strike was started—I believe I was a Union member of the Bus Drivers Union—so I joined Local 833 for the simple reason that being a member—and having my job back at a later date after the strike.

I was not aware at the time I applied for membership in the Union of any benefits I might obtain in the way of relief. I had been obtaining them but I did not know they were going to be raised. I was not informed that the Union had a substantial strike benefit fund from which disbursements were made.

I had my Income Tax made out by a lawyer and he told me he didn't believe it was taxable. Prior to that time I didn't know whether it was taxable or not. I paid my tax and filed a claim in time. When I applied to the Union for strike benefits before I became a member, I was referred by the Union to discuss the matter of benefits with counselors. They didn't ask whether I was a member of the Union or not. They did ask if I was a striker. They just asked me if I was married, where I was living, what I was doing and different things like that, and if I had any independent source of income.

31 Redirect examination by Mr. RASKIN:

When I went to the counselor I signed some form which contained some of the answers that were asked of me. Plaintiff's Exhibit No. 2 is a correct copy of the form that I signed and my signature appears on this copy.

On the back of this Exhibit appears the amount of assistance that I received on the various days. When I was single, in 1954, I got $7.50 for food and $9.00 for rent.

I did not receive any cash money to pay the rent—it was paid for me. I did not receive any cash money to pay for food. I was given some kind of a voucher. Plaintiff's Exhibit No. 3 is a copy of a form that was used when I was given a voucher to go and get food at some store in Sheboygan. It was all filled in when I received it.

I did not attend any meetings of Local 833 in either March or April of 1954. I did not attend the meeting where a strike was voted.

Re-cross-examination by Mr. ATHERTON:

When I became a member of the Union I believe I was furnished a copy of the Constitution and By-Laws. I understand the purpose of the Union's calling this strike was to secure seniority, arbitration and better working conditions.

I understood that as a member of the Union I was expected to cooperate in every way with the Union in making the strike against the Kohler Company effective. I understood my cooperation with the Union required me to continue on strike against the Kohler Company and refrain from working for that company until the objective of the strike had been accomplished.

ALLAN GRASKAMP called as a witness on behalf of plaintiff.

Direct examination by Mr. RASKIN:

My name is Allan Graskamp. I live at 1810 South 22nd Street, Sheboygan, Wisconsin, and have lived in the City of Sheboygan for 22 years.

I was employed by the Kohler Company for 16 years up to the time of the strike.

I have been President of Local 833 since June, 1953. Local 833 had the bargaining rights at the Kohler Company plant, originally gained in 1950 through the Independent Local Union affiliated with the United Auto Workers, and then in a National Labor Relations Board election in 1922. This election was among all the members in the bargaining unit of the Kohler plant. The strike was called in April, 1954.

There were members of the Union and non-members of the Union who returned to work after the strike was called, and after some of them had previously received assistance. Some members had received assistance and also returned to work.

ALLAN GRASKAMP recalled as a witness.

The strike vote was taken in the month of March, 1954. First there had to be a vote authorizing the Local Union to call a special meeting for the taking of a strike vote and then seven days had to elapse to advertise to the membership that there is going to be a strike vote taken, and then after that elapse of time a meeting is set and a strike vote is taken by secret ballot. At that time about 88.2% voted in favor of the strike.

The Local Union is composed of just Kohler workers, people working for the Kohler Company. Local 833 is affiliated
33 with the International UAW. I was active and present during the time that strike assistance was given to various individuals. They didn't lay down any conditions for receiving this assistance. The people that came, came on their own. They served—like the counseling committee, all on their own free will. They volunteered to serve. They were not compelled to do anything. They had just to show that they were in need of it. That they weren't employed some place else. That they didn't have sufficient income to take care of their needs, such as food, shelter, utilities. If they had not received this assistance, they would either get an eviction

notice or their utilities would be shut off—their light or their gas.

Cross-examination by Mr. ATHERTON:

Q. Did the Union expect those who applied for relief—strike benefits to participate in the strike by performing picketing duty, duty in the soup kitchens, and assisting the counselors, or anything of that sort?

A. Did we request them to?

Q. No. Did you expect it?

A. I think you would say it was a moral obligation. It was their strike. They were the only ones to benefit. They were not compelled to. There was many people never participated.

Q. In other words, your testimony now is that the Union did expect them to render picketing service—

A. No. I didn't say that. I said that I felt that the people themselves probably had a moral obligation. We didn't expect them to.

Q. You did not expect them to render any services in the way of picketing duty?

A. We had many people that never participated, and got assistance.

34 Q. I don't think your answer is responsive to my question. The question is, did you expect them to do so, not whether they did or not.

A. I would expect that—we thought they probably would, that they would participate.

It is part of the practice of a strike to picket the employer's business premises to advertise that the people are on a strike. I don't think we would expect any outsider to picket. Although we did have such picketers from other Locals in the community, we did not employ outsiders to perform any picketing duty.

I don't know whether to say "yes" or "no" as to whether you would expect a strike to be effective unless there was picketing done. I have known of instances where there was very little picketing done.

EMIL MAZEY called as a witness on behalf of plaintiff.

Direct examination by Mr. RASKIN:

My name is Emil Mazey. I live at Grosse Pointe, Michigan, a suburb of Detroit. I have been the Secretary-Treasurer of the International Union, UAW-CIO for 10 years, continuously.

My basic duties are to handle the money of the Union. I am responsible for receiving the money; I am responsible for expenditures of the organization; I have the responsibility investing the funds of the Union. I am also a Director of the Accounting Department of the Union. I handle the purchasing of the organization. I am a Director of the Veterans Department of the Union; a member of the Policy Committee of the organization. I am a member of the Executive Board and am Acting President in the absence of Walter Reuther.

I have connection with all the Local Unions. We have about 1275 chartered Locals, and I have direct association with all of them. The first contact I had with Local 833 was after the strike took place. I addressed a meeting in front of the plant gates several days after the strike began.

I had no connection with the calling of the strike. I happened to be on vacation at that time. I did not attend any meetings of the Local Union prior to the strike actually being authorized. The only extent of the connection of the International Union with the calling of this strike was that under the terms of our Constitution, in the event the Union and the Company are unable to resolve their differences, a special membership meeting must be called and permission must be granted by the members, by a vote at that meeting, to take strike action. The Local Union, after it takes a strike vote, before it can legally go on strike, must seek strike approval or authorization from the International Executive Board.

The rendering of financial assistance to individual members does not form any consideration in the calling of a strike. Strikes are only called when we cannot resolve the problems with the employer in any other way.

The basic reasons of calling the strike were questions of arbitration, grievance procedure, seniority, wages and social insurances that include the pension, group life insurance, medical insurance, and other various conditions of employment.

When the Company notified the Local Union that it intended to terminate the contract of March 1, 1954, I was advised of the notice at the time it was received by the Local. The first thing I did was to direct a member of the Community Services Department, of which I am a Director, to establish a strike assistance program for the Kohler workers.

The contract terminated on March 1, 1954, and the Union sought to have the Company to agree to extend the contract until an agreement could be reached. The Com-

pany refused and we worked without a contract from March 1 until April 5, 1954. The Local was very desirous of striking earlier, but representatives of the International Union persuaded them to continue to work, to try to work out these questions around a bargaining table.

The basic condition for receiving strike assistance was the need of the individual member who was on strike.

The member must have a need. We worked out a form where we took the name of the applicant for assistance, and asked him a series of questions as to his marital status, the number of children he had, whether he owned his home, whether he had gas, electricity, type of heating unit he had in his home, whether he had a bank account, whether there was more than one person working in the family. We tried to determine it through a series of questions that were prepared after a study of procedures of welfare agencies to try to make a determination without actually investigating the worker at his home to see if he had any.

The only basic difference between our investigation and that of Sheboygan County, for example, which has a staff of investigators that would go out to the home of the workers seeking assistance from the County, is that we in our case depended entirely upon the questionnaire to make our investigation. We didn't have the staff and resources to work more closely. If a member of the Union felt that he was unjustly denied strike assistance, he obviously had the right to either appeal to the Local Union or to appeal to my office because the
37 people who helped, acting as counselors, were all members, in this particular case, of Local 833, and people are human beings, they could make mistakes.

As to the reference in the stipulation that the Local Union had some $63,000 in its strike fund—that money came into the fund from 5¢ out of each dues received from each member of the Local Union and was set aside in a strike fund. We had other contributions from other Local Unions, both the UAW Locals and Locals outside of the UAW, fraternal organizations, and business men and so on, who made contributions to the Local Union for strike assistance.

The administration of the strike program was in the City of Sheboygan. We had an office and quarters established there. Of course the sources of the funds, the bulk of the funds came from my office in Detroit, from the International Union treasury. The International strike fund currently is

raised by setting aside 25¢ of the $1.50 a month we receive in per capita taxes from each member in a special fund known as a strike fund. The only standard that was used to establish their need was a questionnaire that we used to counsel the strikers to try to determine their needs. It was the counseling form, plus the judgment of the individual counselor that determined whether or not a striker would receive strike assistance. There was no distinction drawn between those who were members of the Union and those who were not. The only yardstick we used was to determine whether or not the member had a need, whether he needed money for food, clothing, or shelter. If a striker were employed, he did not receive assistance.

The basic objective was to try to minimize the sacrifices and hardships that were brought about by the unemployment caused by the refusal of the employer to work out a satisfactory agreement. The only yardstick we used was whether or not a need existed. Our counselors did not question a striker as to whether or not he spent time on the picket line or worked in the soup kitchen, or performed any other duty. It was possible somebody could walk in from the street and ask for strike assistance and, obviously, he would not be entitled to it unless he were a striker.

In the event a striker and his family were threatened with the cutting off of electricity or gas we paid the utility bills. Shortly after the strike began the Company refused to continue the Group Life Insurance Program and the Medical Insurance Program, and because of their refusal, the Union picked up the cost of the Group Life Insurance Program, as well as the Medical Insurance. We provided Blue Cross and Blue Shield for all the strikers during the strike. The whole program was based on need, and it was our opinion that a single person did not need as much money for food as a married person and a person that had children or various other dependents would need more money than a couple without children. So, we graduated the amount of assistance we gave the workers on strike. There were no conditions of any kind established outside the fact that he had need. There was no requirement that they perform any picketing duty, or any other kind of duty.

Our counselors had no way of knowing whether a striker did any picketing duty or not, and, obviously, nobody was

penalized for that because that wasn't one of the conditions under which they received strike assistance.

There were persons who received assistance and at some later time returned to work at the Kohler Co. Members of the Union who abandoned the strike by returning to work would not be members of the organization any longer.

39 The bulk of the strike assistance came out of the strike fund of the International Union, but we did receive contributions and donations from various Local Unions, and from people and groups who were friendly to the cause of the Kohler workers. These contributions were not earmarked for any individuals, but I do recall—one of the Local Unions, before Christmas of 1954, specifically donated some money to pay for shoes for the Kohler children. That is the only earmarked fund that I know of. I think we did have some fund earmarked for shoes at one time. The distribution was handled by the Local Union I think. On the matter of toys, they had a special committee dealing with that question.

When it appeared to us that the strike was not going to terminate quickly, we set up employment counseling to assist Kohler workers to obtain jobs elsewhere. The program was quite successful. We were able to help many hundreds of Kohler workers to obtain employment in other plants.

We did not give financial assistance to enable workers to move to other cities. The records were handled in Sheboygan. They were, indirectly, under my supervision. They were handled by one of my staff members who had direct charge of the Counseling Program—his name was Joseph Burns. These accounts were audited. We have a 22-man Auditing Department and we carry on continually auditing of records of Local Unions, and in strike situations we made periodical audits and at least an annual audit of the expenditures and income in a strike situation.

Under the terms of our Constitution, a member of the Union does not have to pay dues unless he has at least 40 hours employment during the month of the calendar

40 worked. In the case of a worker on strike, he receives no income from employment and does not have to pay dues.

Employees on strike are not entitled to receive Unemployment Compensation in the State of Wisconsin. They can in New York and New Jersey. The program of the Union on

strike assistance, as was stipulated, pointed out that members were to use community agencies first before the Union provided any strike assistance. In this particular case, the community assistance available in Sheboygan County was so small, and so much red tape involved in obtaining it, we decided that Kohler workers would not have to seek assistance from the community agencies.

I mean by municipal agency, an agency which derives its funds from taxes. In this case, I believe it would be the Sheboygan County Welfare Agency—I am not sure of the exact name. It is a governmental agency. Municipal agency refers to cities. I think this was a County organization.

Cross-examination by Mr. ATHERTON:

The strike fund was established in order to minimize the hardships on the part of workers and their families in the event they were forced on strike by an employer refusing to settle grievance and problems in collective bargaining matters. These funds were accumulated for strike assistance to members of the Union who are on strike. In the states of New York and New Jersey the striker could draw Unemployment Compensation. In these two states they draw Unemployment Compensation after they have been on strike for 7 weeks. In those states if the Unemployment Compensation received (in either New York or New Jersey) is equivalent to the strike aid they would get under our program, they would draw no
41 assistance at all. If the striker had only a short period of time of qualification for Unemployment Compensation, we would supplement his Unemployment Compensation through our strike assistance program.

The basis of our strike program is to try to meet the emergency needs of our members, and where the Unemployment Compensation is not enough to meet the emergency needs, we would then supplement it with our own funds. It is not a matter of Unemployment Compensation, it is strike assistance. It is not a matter of right, like a worker draws Unemployment Compensation because he has had certain earnings, he has established certain credits and receives his Unemployment Compensation as a matter of right. Strike assistance is not a matter of right—it is a matter of need. He would have to be unemployed as a result of a strike, and he would have to have a need. He could be unemployed as a result of a strike and not have a need, and he would not receive any assistance.

I would say that every member has a moral obligation to carry out the objectives of the organization. I would expect a member to do everything he could to aid his own cause, which is the reason he is a member of the Union. He becomes a member of the Union to improve his wages and working conditions. I would assume he would do everything he could to further that end. The Union is a voluntary association of workers in a given establishment, and in the case of the Kohler workers when they voluntarily decided, by secret ballot, to go on strike, obviously, I would expect every member who made that decision to be bound by the democratic vote of the majority and try to further their cause.

I have not had a single instance brought to my attention where a striker was complained about for not participating in the activities. The whole purpose of the strike
42 is to deny the employer the benefit of the labor of the individual workers as a means of establishing economic pressure on the company to try to bring about economic justice at the bargaining table. That is the sole purpose of the strike.

The Union is the employees. In the case of Kohler, when you talk about the Union at Kohler, you are talking about the employees of the plant. They aren't two separate entities. The employees are the Union. So in this case when the Kohler workers make a decision that they are not satisfied with their wages and working conditions, and they desire to go on strike to deny the sale of their labor power to the employer, they are making a decision of trying to create economic pressure on the Company to bring economic justice to the bargaining table.

Each member of a Local Union, who holds his membership in a Local, is automatically a member of the International Union, which means all of the membership of all of the Locals put together. When you talk about the administratorship of these funds, they are administered at two levels: At my level where we make a decision on giving a Local Union a certain amount of money to meet the needs of the members on strike; and then the Local Union has the responsibility of actually doing the on-the-spot administratorship of actually carrying on interviews, signing the vouchers, preparing the checks, and doing this work. So it is a two-level administration. No strike funds can be disbursed to an applicant unless the Union authorizes the expenditure.

Mr. ATHERTON:

Q. Well, you wouldn't compare the Union to the Red Cross, would you?

A. In some respects we carry out the same functions as the Red Cross does. The Red Cross acts in emergencies, in national disasters and floods, and matters of that type.

43 Q. But your Union does—

A. I would like to answer your question. We, for example, gave $250,000 to the victims of the Flint tornado; we gave $100,000 to the victims of the flood in the State of Connecticut, so we are performing exactly the same services as Red Cross was performing.

Q. Is it not true you were not using strike funds for those purposes; you were using your welfare fund?

A. I believe in that particular case—we don't have a welfare funds as such. I believe in that particular case—we considered the emergency that the floods and the tornado brought about caused hardship to not only our members but to people in the communities in which these disasters took place—that we made this a special expenditure of our strike fund.

Q. Did you authorize a special invasion of the strike fund for that purpose?

A. We felt this was a national emergency that we ought to make a contribution to. If my memory serves me correctly, we did use strike funds for that purpose.

Q. How was that accomplished, by a vote of the membership or by action of the Executive Committee of the Union?

A. Under the structure of our Union the highest body of the Union is its conventions that are held every two years. Between conventions the Executive Board is the supreme body. Obviously, you can't get a million and a half members in a meeting, and the decision was made by the Executive Board.

Q. Was it subsequently approved by the members?

A. No. The Executive Board acts and functions for the members the same was as the Board of Directors of a corporation functions on behalf of its stockholders.

Q. But here you have a situation where you state that the Executive Board of the Union authorized disbursement
44 out of the general strike fund for purposes other than strike benefits.

A. Yes. I said the we considered this to be a national emergency that affected various communities around the country in which we had members, and in which there was distress.

and need, and that in this respect we functioned in exactly the same manner as the Red Cross did.

Q. And you also testified that the Union and the members of the Union are all one, there is no distinction between the two?

A. That's right.

Q. And yet you have testified that the Executive Board of the Union did not find it expedient or necessary, under the Constitution and By-Laws, to ask the approval of the entire membership of such action.

A. Well, let's be practical and reasonable. To begin with, it is impossible to have a referendum vote on a question of this type. When Congress passes some particular act, they don't ask all the citizens whether or not they are in favor of the act. They have delegated responsibility; and so do we in the Union. We have delegated responsibility in our Executive Board, and we have a democratic convention every two years in which we have an average of one delegate for every 400 dues-paying members to pass upon our actions. I make a financial report every six months to our members. My books are audited. I make a financial report to the convention of the Union, and the actions of the financial transactions of the Union are approved in an officers' report that is brought to the convention by rank and file committee, and therefore these actions have been approved. They were approved after the fact, however. It is impossible to ask members in advance of an event of this type for their approval.

45 Q. The so-called strike fund, is that a sinking fund, if you know what I mean? Is it taken out and actually deposited in a bank for that specific purpose and earmarked for that particular purpose, or is it merely a bookkeeping entry on your books allocating so much of the income of the Union to this purpose and something else?

A. We have a number of funds in the Union: We have a general fund, we have a strike fund, we have a citizenship fund, we have a fair practice anti-discrimination fund, we have a pension fund, we have an educational fund, and we have a recreational fund. All of these funds are earmarked under the provisions of the Constitution, and we set aside in the case of the strike fund 25 cents per month per member into a fund—into the strike fund. As far as banking accounts are concerned—I think that's the reference you had to the sinking fund—they are all part of two banking accounts: We have a

payroll account and we have a general banking account. But I do keep records to allocate these various funds, and I make reports to the Executive Board and to the membership on the status of the various funds.

Q. So, in other words, you do not deposit the strike fund in any particular banking account, earmarked as strike funds in a trustee account?

A. We don't have a separate account for the strike fund, no.

* * * * *

It was the policy of the Union in 1952 to require a striker to apply to welfare funds first. The position of our Union was that we pay taxes to the community agencies that make welfare funds available and at the time we felt that our members ought to use the services which they pay taxes for instead of drawing on the Union funds initially. That policy, however, has been changed. It is not necessary for a member of our Union now to go to a welfare agency and apply for assistance from the welfare agency before we give him strike assistance.

The policy in 1954 was to use community agencies but, as I testified previously, that in the case of the Kohler workers we waived that particular policy because, after checking with the Sheboygan Welfare Agency, we found that the Kohler workers were expected to give up their license plates and not use their automobiles, and restrictions were so great that we didn't think we ought to impose those restrictions on the Kohler workers.

At no time has it been our policy that our members had to go to the Community Chest Funds for assistance. But, in 1952 and 1954 at the time of the action we are talking about, the welfare agencies of the county which are maintained by taxpayers' money, it was our policy at that time that they had to exhaust that effort first before we gave them assistance. However, as I stated before, we waived it in the case of the Kohler situation. We actually save the Sheboygan taxpayers a lot of money by the assistance we gave the Kohler workers ourselves.

Redirect examination by Mr. RASKIN:

I am familiar with such organization as the St. Vincent de Paul Society, the Salvation Army. I am a member of the Executive Board of the Detroit Community Chest, and I have

been for a good many years—and I am familiar with 195 organizations in that community. I know that such agencies extend assistance to people who are in need.

We probably give the Kohler workers more assistance than they could get from the agencies that are maintained
47 by donations from the citizens in a given community. We carry out the same function, for the purpose of the strike assistance program is to satisfy the needs of our members in food, clothing, and shelter, and any other needs that people have when they are unemployed. The Community Chest Agencies try to satisfy the same needs. They might also satisfy legal needs. They also maintain Legal Aid Bureaus as part of our Chest in Detroit. If a person needs an attorney, he might get assistance through monies that are set aside for that purpose.

I know that the Community Chest Agencies would grant relief and make payments to persons on strike. Before we had our current strike program, and did not have very much money in our fund, we used to get assistance from the Salvation Army groups and from various other groups of that type. We exhausted and used all the community agencies that we could, because we had no other source of meeting the emergency needs of our members that were brought about by the result of a strike.

HARVEY KITZMAN called as a witness on behalf of plaintiff.

Direct examination by Mr. RASKIN:

My name is Harvey Kitzman. I live at 2932 North Hackett Avenue in the city of Milwaukee: I am a Regional Director for United Auto Workers of Region 10, which covers the territory of six states—all of Wisconsin, Minnesota, North and South Dakota, Montana and Wyoming.

The function of the Regional Director is to service Local Unions on a day-by-day basis with their problems in the plant under the various agreements, along with helping them negotiate their agreements during the contract negotiating
48 time. For that purpose I have a staff where each staff member is assigned so many Local Unions that he services on a day-to-day basis. Local 833 is a part of Region 10 and my office rendered services to it through the staff members assigned to that Local.

The strike was not called by my office. That was done by the Local Union itself. My office participated in the negotiations. I, myself, spent 66 days at the bargaining table in that strike. That is more than you would spend in 10 Local Unions without getting any where. My office did not take an affirmative position in the calling of the strike. That was done by the Local Union. I did participate and asked the Local Union not to go on strike in March when the old contract expired—and advised them that we ought to try and see if we could work out an agreement. As a result, we kept on negotiating for a month and 5 days beyond the expiration—or cancellation of the contract. At that point the Local Union decided they weren't getting anywhere; they had to take some other action, and took strike action.

When a strike is called and the strikers find themselves in need whereby they have to have clothing, food—the Union makes an application to the Regional Office, pointing out that there is need here and asking for strike assistance. I signed this request and forwarded it to the International Union Headquarters. I do not lay down any conditions for the distribution of these funds. The only basis is the basis of need. You have families that probably through no fault of their own haven't been able to lay anything away, or they might have payments to make on their homes. They are out of work for two, three weeks, and in some instances immediately they find they can't meet their bills. They don't have food, groceries, milk for their children. If those are the facts, that certainly establishes the fact of need, and at that point we give
49 them assistance. Such assistance is given to people who are not on strike on various times by the Local Union.

The Union does give donations to people in need who are not on strike. I had this personal experience where a family, while they were away from home one afternoon, their home burned down. They lost everything they had, and in this case, the head of the family was a member of the Union. The Union went out and purchased a stove and the necessary furniture that they need so that they could at least setup housekeeping, which was an outright donation to them.

In the United States District Court

Instructions to jury

The COURT. Members of the Jury, this action is brought by the plaintiff against the United States of America to recover income taxes paid by him under protest. The plaintiff claims that the money in question or that the receipts in question—whether money or merchandise is immaterial—were not income but were, in fact, gifts.

You have heard the evidence and the contentions presented by the parties. The court will now submit the issue to you in a special verdict consisting of one question. This question you are to answer solely from the evidence received on this trial considered in the light of the instructions which I will now give you. It is your duty to answer this question on its own merits, uninfluenced by any thought or desire as to the final outcome of the case under the law as the court may be called upon to apply the law. In answering this question you are not to be moved by any feeling as to which party you would like to have win the lawsuit nor by any motive other than that of trying to determine the actual truth with respect to the inquiry. You are not to understand by
50 the wording of the question that the court intimates any opinion as to how it should be answered. You must be governed by the evidence, according to the evidence such credibility as in your best judgment you believe it entitled to, and based on the evidence and these instructions you are to answer the question as you believe the facts to be.

The question reads as follows:

Were the amounts received by plaintiff, Allen Kaiser, from May 14th to December 31st, 1954, from United Automobile, Aircraft and Agricultural Implement Workers of America, a gift?

And that question you are to answer "yes" or "no" from the evidence and applying the instructions of the court.

The burden of proof as to this question is on the plaintiff. This means that it is the duty of the plaintiff to satisfy and convince your minds, by a clear preponderance of the credible evidence to a reasonable certainty, that this question should be answered "yes." If you are not so convinced, you will answer the question "no."

By "preponderance of the evidence" is meant the evidence which possesses the greater weight or convincing power. It is not enough that the evidence of the party upon whom the burden of proof rests is of slightly greater weight or convincing power; it must go further and satisfy or convince the minds of the jury before the burden of proof is discharged.

The convincing power of the evidence is not necessarily determined by the number of witnesses. By a "preponderance of evidence" is meant a preponderance in the weight, credibility and convincing power of the evidence.

In connection with these definitions you are instructed that in determining the convincing power of evidence
51 you may take into consideration the knowledge or source of information of the several witnesses, their interest or lack of interest, their candor or lack of candor, the bias or lack of bias manifested by them, the manner of testifying and the bearing of the witnesses upon the witness stand, any contradictions or inconsistencies in their testimony, the probability or improbability of the statements or assertions made, and all the facts and circumstances that have been made to appear upon this trial.

If you find that any witness or witnesses have knowingly and wilfully testified falsely as to any material fact in the case, you are at liberty to disregard all of the testimony of such witness or witnesses not corroborated by other credible evidence in the case.

Now, Members of the Jury, you are not called upon to decide the wisdom of the tax laws. Tax laws are enacted by Congress. The American people vote for members of Congress and members of the Senate. Once the tax law is enacted it is your duty, under your oath as jurors and my duty under oath, to enforce the law as written. The wisdom or lack of wisdom is not for your consideration. Also, I am sure that you know, as all of us know, that the payment of taxes is in many cases a hardship—or at least the taxpayer thinks it is—and there are many things that we as American citizens could have if we didn't have to pay taxes. But we have to support a government if we are going to have one, and your government has certain functions, and those functions and the wisdom of the tax policy is for Congress and the Government, and it is up to us to enforce the law, whatever we find the fact to be in this case.

It is the contention of the plaintiff that the payments in question were a gift. It is the contention of the defendant that such payments were part of the gross income of
52 the plaintiff for income tax purposes. "Gross Income" is defined in the statute, in so far as material to this case, as follows:

> "GROSS INCOME DEFINED. General Definition. Except as otherwise provided in this sub-title, gross income means all income from whatever source derived, including (but not limited to) the following items:
>
> "Compensation for services, including fees, commissions, and similar items.
>
> "Gross income derived from business, from dividends, annuities, pensions, income from discharge of indebtedness, and distributive share of partnership gross income, among other items."

You will note that the definition is broad and states that "gross income" means all income from whatever source derived, including the items above enumerated, but that "gross income" is not limited to income or funds received from the items which I enumerated.

You are instructed that if these payments to the plaintiff were "gross income", then you should answer the submitted question "no".

This statute describes income taxed in sweeping terms and should be broadly construed in accordance with the obvious purpose to tax incomes comprehensively. Under this section, defining "gross income," a payment even though made entirely voluntarily, if it is compensation for services, is income. The absence or presence of consideration, in the legal sense, is not the controlling factor in cases involving the question of whether voluntary payment for services is compensation or income, but the sole question in that respect is the intention with which the payment was made.

The language used by Congress in this statute was so used to exert in the field of income tax the full measure
53 of its taxing power. Congress applied no limits as to the source of taxable receipts, nor restrictive labels as to their nature.

To illustrate how broad the language of Congress was intended with reference to salaries, wages, or compensation for personal services, where a corporation made payments of stock

to an individual in return for the individual's promise not to enter into a certain business in competition, such payments are income. Compensation for refraining from labor is taxable income no less than compensation paid for services to be performed.

Whether the receipts were gifts is primarily a question of fact to be resolved under the peculiar circumstances of this case. In determining whether these payments were gifts, the intention with which the payments, however voluntary, were made, rather than the presence or absence of consideration therefor, controls. If it was the intention of the Union to pay for services, these payments are income; but if made to show good-will, esteem or kindliness toward the plaintiff, without any thought of payment for services or without any consideration or obligation to make payment, then they were gifts. If these payments were made by the Union because of any obligation, either legal or moral, to make such payments under the provisions of its Constitution or under its organization or management, then the payments were not gifts and you should answer the question "no." You will note that this question should be answered "no" if the payments were made because of either a legal or moral obligation to make them.

In considering this question you will, among other things, consider the provisions of the Constitution of the Union with reference to strike benefits, as well as the other actions of the Union in respect to strike benefits.

54 In order to have a gift, there must have been a donative intent on the part of the Union. A claim that a payment is a gift presents a question as to whether the designation as such is genuine or fictitious; that is to say whether, though called a "gift," it is in reality income as defined to you heretofore.

To determine that question, you must consider all of the evidence received in the case. The fact that the motives leading to the payment may have been grounded on business reasons, or even selfishness, is not controlling. The question is, were the payments gratuitous? Were they intended to be gratuitous, without either legal or moral obligation to make the payments and without expecting anything in return?

The question here asked must be resolved under the peculiar circumstances of this case. The mere fact, if it be such, that the payments were voluntary does not, in and of itself,

establish them as gifts. If the payments were made as compensation for services, even though the Union did not consciously have that intent, they constitute taxable income and not gifts. The term "gift" as here used denotes the receipt of financial advantage gratuitously, without obligation to make the payment, either legal or moral, and without the payment being made as remuneration for something that the Union wished done or omitted by the plaintiff. To be a gift, the payments must have been made with the intent that there be nothing of value received, or that they were not made to repay what was plaintiff's due but were bestowed only because of personal regard or pity or from general motives of philanthropy or charity. If the plaintiff received this assistance simply and solely because he and his family were in actual need and not because of any obligations, as above referred to, or any expectation of anything in return, then such payments were gifts.

55 You are instructed that a Labor Union is a voluntary organization, but the members and the Union are distinct. The Union represents the common or group interests of its members as distinguished from their private or personal interests. Dues and assessments paid by members to the Union become the property of the Union, and any individual interest therein ceases upon such payment. As such Union property, such funds are subject to disbursement and expenditure by the Union in pursuance to the legal objectives for which they were designated to be expended. The collection, disbursement and expenditure of these funds is specifically set out and controlled by the Constitution and By-Laws of the Union.

I might state here, Members of the Jury, that when you pay taxes to the City of Milwaukee your individual interest in the tax money ceases, and the expenditure of that money is the duty and privilege of the Common Council so long as it stays within the provisions of law in making the payments. So here that might be illustrative. When this money is paid into the Union, then the individual interest of the members in the money they paid ceases in so far as control over its expenditure is concerned. That is controlled by the Constitution of the Union and the Union officers, and they, as members of the Union, would have about the same amount of control that you as taxpayers have as to what the City of Milwaukee does with its money. In other words, if you don't like what the

City's Common Council does you vote for a different Alderman next time. As long as the Common Council stays within the law, they control the payments.

It is your duty to scrutinize and weigh the evidence, both oral and written. As to the oral testimony, you should consider the manner and demeanor of the witnesses, their
56 interest or lack of interest in the result of the case, their opportunity to know the facts testified about, the reasonableness of the testimony given, and all other facts and circumstances which either support or discredit the testimony of each witness, and you should give it such weight and credit as you think it fairly entitled to receive. You are the sole judges of the credibility of the witnesses.

Now, there has been received in this case a stipulation setting forth facts agreed to by both parties. As I told you yesterday, the facts in that stipulation are binding on you. However, you may come to different conclusions from those facts.

In that stipulation, which you may have in your jury room, there is some underlining and large-face type. That is in there not to provide any emphasis, but because it is an exact copy of the documents which it purports to copy, and where in those documents bold face type is used, then bold face type is used in this stipulation so that it is exactly accurate in so far as they are quoted from.

Members of the Jury, I want to caution you that you are not to let any motive, other than finding the facts from the evidence, enter into or become any part of your deliberation. The question as to whether the Union or the Company is in the right or in the wrong, or partially so, in the Kohler strike is not before you. It has no bearing on the question here presented and, therefore, I again direct you to divorce from your minds and from your consideration any thoughts or ideas that you might have as to whether either side is right or wrong in that strike, and to decide this case without either sympathy for or prejudice against either the Union or the Company. Those questions or feelings have nothing to do with the problem before you, which is simply for you to determine
57 whether the payments in question were income tax purposes, or gifts.

If you are convinced to a reasonable certainty by a fair preponderance of the credible evidence that such payments were gifts and were not income as I defined income to you, then you

will answer the question in the verdict "yes." If you are not so convinced, you will answer it "no."

On retiring to the jury room, it is your duty to answer this question. As you take up this question, you are to decide what the evidence discloses under the rules of law as I have given them to you. You have taken your oath to decide this case upon the evidence and upon the law as given to you by the court. I am sure that you will conscientiously fulfill that duty. You must reach a unanimous verdict; that is, all twelve of you must agree on the answer to the question in the verdict.

You will select one of your members as foreman or forelady and he or she will preside over your deliberations and will sign the verdict which you agree upon.

In United States District Court—Eastern District of Wisconsin

(Caption—No. 56-C-162)

Special verdict—November 14, 1957

Were the payments made to plaintiff, Allen Kaiser, from May 14th to December 31st, 1954, by the United Automobile, Aircraft and Agricultural Implement Workers of America, a gift?

Answer: Yes.

Dated, Milwaukee, Wisconsin, this 14th day of November 1957.

(S) ADOLPH M. SCHLIWA
Foreman.

58 In United States District Court—Eastern District of Wisconsin

(Caption—No. 56-C-162)

Opinion—February 19, 1958

The case is before the court on the government's motion, under Rule 50(b), F.R.C.P., to set aside the verdict of the jury and the judgment entered thereon and to enter judgment in accordance with the government's previous motion for directed verdict; or, in the alternative, if the motion to set aside be denied, for a new trial.

The action was brought for refund of taxes allegedly erroneously collected. The only item in issue is an amount of $565.54

received during 1954 by plaintiff as strike benefits from the United Automobile, Aircraft and Agricultural Implement Workers of America, hereinafter referred to as the U.A.W. If such amount constitutes a nontaxable gift, plaintiff is entitled to a refund. If it represents taxable income to the plaintiff, the tax in respect thereof was correctly collected and plaintiff can have no refund.

Counsel for both parties informed the court at the time of the pretrial conference that this was a case of first impression and that there were an unbelievable number of men who had paid a similar tax under protest where a similar situation existed and who were awaiting the outcome of the trial in this case. At the close of plaintiff's case, defendant moved for a directed verdict, and a similar motion was made at the close of all the evidence. On both occasions, the court denied the motion without prejudice. It was apparent that if this were to be a test case, it would be reviewed by appellate courts, regardless of its outcome, and the court felt that there
59 should be a complete record so that no new trial would be necessary if the appellate court reversed.

The issue was tried before a jury and a special verdict of one question was submitted:

> "Were the amounts received by plaintiff, Allen Kaiser, from May 14th to December 31st, 1954, from United Automobile, Aircraft and Agricultural Implement Workers of America, a gift?"

To this question the jury answered "yes". Judgment for plaintiff was entered on the verdict; Rule 58 F.R.C.P.

Stipulations filed with the court before trial set forth the following facts: At the time he paid the tax in question, Allen Kaiser was a resident of Sheboygan, Wisconsin, and in 1954 and prior thereto was an employee of the Kohler Company at Sheboygan, Wisconsin. On March 4, 1954, a strike against the Kohler Company was authorized by the members of Local Union 833, approved by the U.A.W., which strike became effective on April 5, 1954. Kaiser was not present at the meeting of the Union when the strike vote was taken. He did not become a member of the Union until August 19, 1954. The decision to become a member of the Union was voluntarily arrived at by Kaiser. He was on strike at the time he was admitted to membership in the Union. He did not pay any initiation fee or dues because he was on strike.

Beginning with May 4, 1954, before he was a member of the Union, Kaiser received strike benefit payments from the U.A.W. It granted strike benefits to non-members who participated in the strike if they did not have sufficient income to purchase food or to meet the emergency situation. The Union treated non-members on the same basis as members, but non-members, as well, as members, had to be strikers
60 before they could receive assistance from the Union. A distinction was made by the Union between applicants in granting strike benefits to them, depending upon their marital status and number of dependents.

At the time of the declaration of the Kohler strike the U.A.W. had $9,141,488.00 in its strike fund, and Local Union 833 had in its strike fund $63,677.88, which latter amount was transferred to the U.A.W. in 1954 and was set up in a special bank account to deal with strike expenditures and strike needs of Kohler workers.

The Constitution of the U.A.W. contained the following provisions:

> "Article 12, Section 1. The International Executive Board shall execute the instructions of the International Convention and shall be the highest authority of the International Union between Conventions, subject to the provisions of this Constitution, and shall have the power to authorize strikes, issue charters and punish all subordinate bodies for violation of this Constitution.
>
> "Article 12, Section 15. If and when a strike has been approved by the International Executive Board it shall be the duty of the International Executive Board to render all financial assistance to the members on strike consistent with the resources and responsibilities of the International Union.
>
> "Article 16, Section 4. * * * Five cents (.05) of each month's dues payment must be laid aside by the Local Union as a special fund to be used in case of strike or lockout. * * *
>
> "Article 16, Section 11. All Local Unions shall pay to the International Union a per capita tax of one dollar and twenty-five cents ($1.25) per month per dues-
> 61 paying member, twenty-five cents (.25) of which shall be set aside in a special fund as the Inter-

national Union Strike Fund, to be drawn upon exclusively for the purpose of aiding Local Unions engaged in authorized strikes and in cases of lockout, and for that purpose only, and then only upon a two-thirds vote of the International Executive Board. * * *

"Article 16, Section 13. All per capita taxes and all other monies collected for the International Union shall be transmitted to the International Secretary-Treasurer by the twentieth of each month following collection. All such per capita taxes and other monies are strictly the property of the International Union and in no case shall any part thereof be used by Local Unions, except upon permission of the International Executive Board.

"Article 49, Section I. * * * If, as a result of this decision, a strike vote is decided upon, the Local Union Executive Board shall notify all members, and it shall require a two-thirds vote by secret ballot of those voting to declare a strike. Only members in good standing shall be entitled to vote on the question of declaring a strike.

"Article 49, Section 5. Before a strike shall be called off, a special meeting of the Local Union shall be called for that purpose, and it shall require a majority vote by secret ballot of all members present to decide the question either way. Wherever the International Executive Board decides that it is unwise to longer continue an existing strike, it will order all members of Local Unions who have ceased work in connection therewith to resume work and thereupon and thereafter all assistance from the International Union shall cease.

62 "Article 49, Section 6. Any Local Union engaging in a strike which is called in violation of this Constitution and without authorization of the International President and/or the International Executive Board shall have no claim for financial or organizational assistance from the International Union or any affiliated Local Union."

The testimony at trial showed that strikers were not required to serve on the picket lines, help in the soup kitchen, or render like services in order to receive strike benefits. They were encouraged to do so and were regarded by the Union as having a moral obligation to do so. The amount of $565.54

received by Kaiser as strike benefits was in the form of food, clothing, and payments by the Union on his room rent.

There was testimony that on occasion the Union had used money from this strike fund for flood relief and other charitable purposes. This usage is directly contrary to the express provisions of Article 16, Section 11 of the Constitution of the International Union quoted above.

Two of the arguments advanced by the government in support of its motion for a new trial have little weight: First, it is alleged that error was committed because the court did not specifically ask the jury, in the verdict, whether the Union intended to make a gift of the $565.54 to Kaiser. Accordingly, objection is made to the verdict used by the court which asked only whether the amounts received by Kaiser were a gift. To this point it is but necessary to answer that the proposed verdict submitted by the government to the court on the morning of trial consisted of a single question which asked whether "the sum * * * received by [Kaiser] from the Union * * * was a gift;" to point out that the government itself proposed an alteration in the verdict which was actually used and
63 expressed satisfaction in the final form of the verdict when the court accepted the alteration; and to note that at no time did the government request the court to submit a separate question on the specific item of intent. The court is satisfied that the verdict used was the proper one for this case. The matter of intention of the Union was thoroughly covered in the instructions to the jury.

The government also claims that the court's instructions were erroneous in that they included an instruction to the effect that the absence or presence of consideration in the legal sense is not the controlling factor in cases involving the question whether voluntary payment for services is compensation or income, but the sole question in that respect is the intention with which the payment was made. Also claimed to be erroneous is that part of the instructions which stated that whether the receipts were gifts is primarily a question of fact to be resolved under the peculiar circumstances of this case, and that in determining whether the payments were gifts, the intention with which the payments, however voluntary, were made, rather than the presence or absence of consideration therefor, controls. To these objections it may be answered that when the context is considered it is clear that the court was not instructing the jury to disregard the presence of legal

consideration, if it found such to exist, but rather the court, in accordance with the law, was instructing the jury that a voluntary payment made without the presence of legal consideration may nonetheless be taxable income rather than a gift if the intent of the payor was to confer a reward for some service or benefit to him. Such an instruction was clearly to the benefit of the government. Examination of the instruc-
64 tions as a whole reveals that the court repeatedly instructed the jury that if the payments were made by the Union in exchange or return for something the Union wanted from Kaiser, the jury must find the $565.54 to be taxable income. The court told the jury that before it could find the strike benefits to be a gift, it must find that the amount was not paid—

> As compensation for refraining from labor. (Tr. 141)
>
> Under any legal or moral obligation. (Tr. 142)
>
> As compensation for services. (Tr. 143)
>
> As a remuneration for something the Union wanted done or omitted. (Tr. 143)
>
> As anything due to the plaintiff. (Tr. 143)
>
> In expectation of any return. (Tr. 143)

However, the government's motion is more soundly based, insofar as it rests on the contention that under the evidence of the case, "viewing the evidence and all reasonable inferences that may be drawn therefrom in the light most favorable to plaintiff" [Shaw v. Hines Lumber Co., (C.A. 7, 1957) 240 F. 2d 434, 439], as a matter of law the strike benefits constituted taxable income and not a gift.

The evidence in this case is not disputed. The question basically is one of interpretation of the statutes. Findings are held to be subject to review on this question. Bogardus v. Commissioner, (1937) 302 U.S. 34, 38–39, 58 S.Ct. 61, 82 L.Ed. 32; Willkie v. Commissioner, (C.C.A. 6, 1942) 127 F. 2d 953, 955; cert. den. 317 U.S. 659, 63 S.Ct. 58, 87 L.Ed 530.

The 1954 Code sections applicable to the question are sections 61(a) and 102(a). Section 61(a) defines gross income as "all income from whatever source derived." Section 102(a) provides that "gross income does not include the value
65 of property acquired by gift * * *" Thus, gross in-

come is defined in sweeping terms and should be broadly construed in accordance with an obvious purpose to tax income comprehensively.[1] The definition is very comprehensive,[2] intended to be far-reaching, and indicates the purpose of Congress to use the full measure of its taxing power.[3] Construction should be liberal and consonant with that purpose. On the other hand, provisions granting exemption from tax, such as 102(a), are to be construed strictly and with restraint.[4] Words of exemption or exclusion are not to be extended beyond their plain meaning,[5] and exemptions cannot rest upon implication.[6] Specifically, section 102(a), exempting gifts from income tax, should not be construed liberally in favor of one claiming the exemption, but rather in such way as to give section 61(a) its proper effect.

As previously indicated, the material facts in this case are all either stipulated or supported by uncontroverted testimony. It is not disputed that the strike benefits were paid by the International Union on the basis of need and irrespective of membership in the Union. These facts, standing alone, indicate a gift. But it is also undisputed that the strike was being conducted with the approval of the International Executive Board, that Article 12, Section 15 of the International Union Constitution made it "the *duty* of the International Executive Board to render all financial assistance to the members on strike consistent with the resources and responsibilities of the International Union" [emphasis supplied], and that it was required of every person to whom benefits were paid that he join the strike and continue to remain on strike. If plaintiff had been a member of the Union before the strike and had paid his dues, deductible by him and not taxable
66 as income to the Union, he would certainly have had a moral right to strike benefits and might well have been able to enforce that right if the Union arbitrarily denied benefits to him. In such a case an even more clear-cut question would be presented.

A gift, within the meaning of section 102(a), is the receipt of financial advantages gratuitously,[7] is made from a detached and disinterested generosity,[8] without the incentive of anticipated benefit of any kind beyond satisfaction of doing a generous act,[9] without consideration,[10] for that only is a gift which is purely such,[11] without the compulsion of moral or legal duty,[12] and is basically something for nothing.[13] The voluntary character of the payment is not determinative, for a pay-

ment may constitute income to the recipient though made to him without legal obligation."

Applying these rules of law and construction to the undisputed evidentiary facts, it is the opinion of this court that as a matter of law the payments to Kaiser constituted income taxable to him and cannot be brought within the gift exclusion. The payments were made to its members by the International Union under a moral obligation imposed by its Constitution. They were made to all strikers pursuant to a plan whereby something of value to the Union was exacted in return from the recipient, namely, his continued participation in the strike. Either reason is sufficient to prevent the payments from being a gift.

This conclusion is also demanded by the administrative treatment of strike benefits. In 1920, by O.D. 552, C.B. No. 2, p. 73, Internal Revenue issued and promulgated a ruling which dealt with the point in issue in this case:

> "Benefits received from a labor union by an individual member while on strike are to be included in his gross income for the year during which received, there being no provision of law exempting such income from taxation."

67 For thirty-eight years, except as reaffirmed by Rev. Rul. 57-1, I.R.B. 1957-1, 10, this ruling has remained unchanged through repeated Congressional re-enactments of the relevant income tax sections (now 61(a) and 102(a) of the 1954 Code)." Thus, the administrative interpretation and practice must be said to have always been seasoned and settled, uniform and consistent. Considering the length of time the unvaried ruling and practice has been in effect, the non-technical nature of the question, and the importance of the issue in both the tax and labor fields, it must be concluded that Congress was aware of the administrative interpretation when it repeatedly re-enacted the sections. Under such circumstances, the administrative interpretation is not only entitled to great weight, but must be held to have received Congressional approval and to have assumed the force and effect of law. Corn Products Co. v. Commissioner, (1955) 350 U.S. 46, 52-53, 76 S. Ct. 20, 100 L. Ed. 29; reh. den. 350 U.S. 943, 76 S. Ct. 297, 100 L. Ed. 823; United States v. Leslie Salt Co., (1955) 350 U.S. 383, 389, 76 S. Ct. 416, 100 L. Ed. 441; Commissioner v. South Texas Lumber Co., (1948)

333 U.S. 496, 501, 68 S. Ct. 695, 92 L. Ed. 831; reh. den. 334 U.S. 813, 68 S. Ct. 1014, 92 L. Ed. 1744; Crane v. Commissioner (1947) 331 U.S. 1, 7–8, 67 S. Ct. 1047, 91 L. Ed. 1301; Commissioner v. Flowers, (1946) 326 U.S. 465, 469, 66 S. Ct. 250, 90 L. Ed. 203; Boehm v. Commissioner, (1945) 326 U.S. 287, 291–292, 66 S. Ct. 120, 90 L. Ed. 78; White v. United States, (1938) 305 U.S. 281, 291, 59 S. Ct. 179, 83 L. Ed. 172; Helvering v. Winmill, (1938) 305 U.S. 79, 83, 59 S. Ct. 45, 83 L. Ed. 52; Zillmer v. United States, (C.A. 7, 1956) 233 F. 2d 912, 914; Parker Pen Co. v. O'Day, (C.A. 7, 1956) 234 F. 2d 607, 609–610; Gunn v. Dallman, (C.A. 7, 1948) 171 F. 2d 36, 38; cert. den. 336 U.S. 937, 69 S. Ct. 747, 93 L. Ed. 1095.

68 "Nor is a distinction to be made, looking to this early administrative ruling, between strike benefit payments to members and, as occasionally happens, to non-members. As pointed out, in neither case can the payments be gifts.

> "* * * The determination that strike benefit payments are includible in gross income is not affected by * * * the fact that such payments or distributions are also made to persons who are not members of the union. * * *" Rev. Rul. 57–1, I.R.B. 1957–1, 10.

The court is aware of the line of decisions holding that when the Internal Revenue Service makes a ruling on an obscure question, on a question that does not recur repeatedly, where a construction is neither uniform, general, nor of long standing, it is not entitled to substantial weight. The basis of that rule is that it is not to be presumed that Congress follows all the rulings of the Internal Revenue Service. This case involves a situation where a ruling is not only of long standing but concerns, and has over the years, thousands and thousands of men. It is a matter of great public interest. The court is of the opinion that it falls within the type situation where repeated congressional re-enactments of the tax sections, without change, should be held to be an acquiescense in the administrative interpretation and practice.

One would also be loathe to believe that Congress intended that each one of these cases, of which there are thousands, should be tried as a question of fact. If such were the situation, the results would not be uniform, the cost would be prohibitive both to the taxpayer and the government, court calendars would be flooded with these cases, the government

would have to vastly increase its staff of attorneys, and chaos and inequities would be the result. The court believes
69 that if such a situation is to be brought about, it should be brought about by Congress. It is inconceivable that Congress did not intend the law to be uniform.

There is no ground for believing that it has suddenly become the intent of Congress, without any official act or indication, to reverse the situation that has existed for almost forty years and now treat strike benefits as tax-free gifts. It is not the province of the courts to legislate in tax matters either directly, by their own pronouncements, or indirectly, but equally effectively, by allowing jury verdicts to stand which are contrary to law. To do is to pervert the judicial power. Heiner v. Donnan (1932) 285 U.S. 312, 331, 52 S. Ct. 358, 76 L. Ed. 772.

For the foregoing reasons, the court believes that no jury issue was presented and that the government was entitled to have its motion for directed verdict granted.

Counsel for the United States are directed to prepare an appropriate order, submitting it to counsel for the plaintiff for approval as to form only.

Dated, Milwaukee, Wisconsin, this 19th day of February 1958.

K. P. Gruna,
U.S. District Judge.

FOOTNOTES TO OPINION

[1] Commissioner v. Jacobson (1949) 336 U.S. 28, 48-49 69 S. Ct. 358, 93 L. Ed. 477.

[2] Commissioner v. Lo Bue (1956) 351 U.S. 243, 246-247, 76 S. Ct. 809, 100 L. Ed. 1142; reh. den. 352 U.S. 859, 77 S. Ct. 21, 1 L. Ed. 2d 69.

[3] Commissioner v. Glenshaw Glass Co. (1955) 348 U.S. 426, 429-430, 75 S. Ct. 473, 99 L. Ed. 483; reh. den. 349 U.S. 925, 75 S. Ct. 657, 99 L. Ed. 1256; Helvering v. Clifford (1940) 309 U.S. 331, 334, 60 S. Ct. 554, 84 L. Ed. 788.

70 [4] Commissioner v. Jacobson, supra n. 1, 336 U.S. 48-49.

[5] Helvering v. American Dental Co. (1942) 318 U.S. 322, 329, 63 S. Ct. 577, 87 L. Ed. 785.

[6] U.S. Trust Co. v. Helvering (1939) 307 U.S. 57, 60, 59 S. Ct. 692, 83 L. Ed. 1104.

[7] Helvering v. American Dental Co., supra n. 5, 318 U.S. 329; United States v. Burdick (C. A. 3, 1954) 214 F. 2d 768, 771.

[8] Commissioner v. Lo Bue, supra, n. 2, 351 U.S. 246-247.

[9] Bogardus v. Commissioner (1937) 302 U.S. 34, 41, 58 S. Ct. 61, 82 L. Ed. 32.

[10] Webber v. Commissioner (C.A. 10, 1955), 219 F. 2d 834, 836; Noel v. Parrott (C.C.A. 4, 1926) 15 F. 2d 669, 671; cert. den. 273 U.S. 754, 47 S. Ct. 457, 71 L. Ed. 875; Schumacher v. United States (Ct. Cl., 1932) 55 F. 2d 1007, 1011.

[11] Bass v. Hawley (C.C.A. 5, 1933) 62 F. 2d 721, 723.

[12] Bogardus v. Commissioner, supra n. 9, 302 U.S. 41.

[13] Commissioner v. Le Rue, supra n. 2, 351 U.S. 247; Commissioner v. Jacobson, supra n. 1, 336 U.S. 50; Helvering v. American Dental Co., supra n. 5, 318 U.S. 331.

[14] Old Colony Trust Co. v. Commissioner (1929) 279 U.S. 716, 730, 49 S. Ct. 499, 73 L. Ed. 918; United States v. Burdick, supra n. 7, 214 F. 2d 771.

[15] Commissioner v. Jacobson, supra n. 1, 336 U.S. 48-49.

In United States District Court For the Eastern District of Wisconsin

(Caption—No. 56 C 162)

Order—March 12, 1958

This cause coming on to be heard upon a motion of the defendant for judgment in accordance with defendant's motion for directed verdict, or in the alternative, for a
71 new trial, and the Court having considered each of the motions,

It Is Ordered: That the motion of the defendant to set aside the verdict and the judgment entered thereon for the plaintiff, and for judgment for the defendant notwithstanding the verdict in accordance with defendant's motion for a directed verdict is granted, and judgment for the defendant may be entered accordingly; and

It Is Further Ordered: That defendant's alternative motion for a new trial is denied.

Dated at Milwaukee, Wisconsin, this 12th day of March, 1958.

(S) K. P. GRUBB,
United States District Judge.

Approved as to form only;

(S) Max Raskin
MAX RASKIN,
Attorney for Plaintiff.

In United States District Court for the Eastern District of Wisconsin

Caption—No. 56 C 162

Judgment for Defendant—March 28, 1958

This cause came on for trial before the Court and a jury on the 14th day of November, 1957, both parties appearing by counsel, and the Court on motion of the Defendant having set aside the verdict for the plaintiff and the judgment entered thereon, and having granted defendant's motion for a directed verdict in its favor,

It Is Hereby Ordered, Adjudged And Decreed that plaintiff take nothing; that the action be and it is hereby dismissed on the merits; and that defendant have and recover from plaintiff its costs in the action.

72 Dated at Milwaukee, Wisconsin, this 28th day of March, 1958.

K. P. GRUBB,
United States District Judge.

In United States District Court for the Eastern District of Wisconsin

Caption—No. 56 C 162

Notice of Appeal

Notice Is Hereby Given that Allen Kaiser, the plaintiff above named, hereby appeals to the United States Court of Appeals for the Seventh Circuit from the order setting aside the verdict and the judgment entered thereon for the plaintiff and from judgment for the defendant notwithstanding the verdict, entered in this action entered on the 12th day of March, 1958.

(8) Max Raskin
MAX RASKIN.

Max Raskin, Attorney for Appellant, 606 West Wisconsin Avenue, Suite 1865, Wisconsin Tower, Milwaukee, Wisconsin.

73 In the United States Court of Appeals for the Seventh Circuit

Appendix to Appellee's Brief

TRANSCRIPT OF PROCEEDINGS ON NOVEMBER 12, 1957

[Tr. 105] Mr. ATHERTON. Now, may it please the court, the Government has no affirmative evidence to put in. We rest on the stipulation that has been submitted to the jury and on the direct testimony and cross-examination. * * *

* * * * *

[Tr. 119, Plaintiff's closing address to the jury]:

Mr. RASKIN. * * * The decision was that sacrifices were necessary and essential to his own dignity. However, some time in the month of August of 1954 he decided to become a member of the union, and again, as was testified to—and, by the way, all of the testimony in this case, you probably will not have the good fortune of sitting as jurors in another case where none of the testimony is controverted. All of it is admitted. No one has challenged the Government, the Internal Revenue Department has not challenged a single phrase, a single word, a single sentence of any of our witnesses. They are the truth, and you can't challenge the truth; and the Tax Department realizes it. * * *

DEPOSITION OF EMIL MAZEY

[P. 2] Q. I will ask you to state your name, please.

A. My name is Emil Mazey. * * *

Q. What position do you occupy in the International UAW-CIO?

A. I am a Secretary-Treasurer of the International Union.

* * * * *

[P. 21] A. Well, I wish I could answer your first
74 question. The aid will continue as long as the strike lasts. The aid has continued from about the beginning of the third week of the strike up until the present time, for a good many of the Kohler workers who had been on strike for a little over three years.

Q. That has been a substantial drain on the resources of the International Union?

A. It has. We have spent in excess of nine million dollars in strike aid to the Kohler workers.

Q. When a strike is called by the Union, what are the members of the Union expected to do?

A. Well, they are expected to prosecute the strike successfully.

Q. How are they expected to do that?

A. Well, the members have a moral obligation to picket, to work in the soup kitchen and to perform work as counsellors. They have a moral responsibility, but not a mandatory responsibility. * * *

* * * * * *

[Pp. 31–32] Q. If a member of the Union is required by the employer to cut his work week below the normal work week period, for any length of time, does the Union make any benefit payments?

A. Absolutely not. Our finances are not in a position to aid members in that category. We have about fifty or sixty thousand unemployed members at the present time. I am sure some of them have exhausted their unemployment compensation, and it would be impossible, physically impossible for us to aid any of them. There isn't that kind of money in the Union treasury. * * *

75 In the United States Court of Appeals
For the Seventh Circuit

No. 12317. SEPTEMBER TERM AND SESSION, 1958

ALLEN KAISER, PLAINTIFF-APPELLANT

v.

UNITED STATES OF AMERICA, DEFENDANT-APPELLEE

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF WISCONSIN.

Opinion—December 22, 1958

Before DUFFY, *Chief Judge*, and MAJOR and KNOCH, *Circuit Judges*.

DUFFY, *Chief Judge*. This is a suit to recover an alleged overpayment of income taxes for the year 1954. The question presented is whether strike benefits received from a union by a worker while on strike is taxable income or, in the alterna-

tive, gifts which are exempt from income tax. The jury in the District Court found the strike benefits received by plaintiff were gifts. Subsequently, the trial court set aside the verdict of the jury and entered a judgment for the defendant dismissing the complaint herein.

On April 5, 1954, plaintiff Allen Kaiser was an employee of Kohler Company of Kohler, Wisconsin. On and before said date, Local 833 UAW, an affiliate of the International Union UAW, was the certified collective bargaining agent for the production and maintenance workers employed by Kohler Company. Not all of such employees were members of the Union.

76 On April 5, 1954, in concert with other employees, plaintiff Kaiser went out on strike. On that date he was not a member of the Union and did not apply for membership until August 19, 1954. During the strike he did not receive any benefits in cash, but commencing May 4, 1954, he received from the Union maintenance assistance in the form of food, clothing and payments of rent on the house which he occupied with his wife and two children. The funds from which the strike benefits were distributed were derived from the local Union, the International Union, and contributions from other unions, organizations and individuals.

On April 15, 1955, Kaiser filed with the Director of Internal Revenue for the District of Wisconsin, an income tax return showing wages received in the year 1954 in the amount of $2,669.48 with a tax liability of $359.00. As wages withheld totaled $388.84, he claimed a refund. On February 17, 1956, the Director, by audit, increased the adjusted gross income by adding $565.54, the value of the maintenance assistance received by plaintiff. This resulted in a tax of $467. The plaintiff paid the sum of $108.00 as additional tax plus interest, and sued for a refund.

The basic condition for receiving strike assistance was the actual present need of the individual worker. By questionnaire, it was determined whether he needed food, clothing and shelter. Such assistance was not a matter of a right like unemployment compensation. When plaintiff received his assistance, he neither gave nor promised anything in return. He was not required to render any service to the Union.

The learned trial judge apparently assumed that strike benefits constitute taxable income unless they are excepted as gifts. He relied on the broad scope of the defintion in Sec.

61(a) of the Internal Revenue Code of 1954 that "gross income means all income from whatever source derived." However, the Commissioner has long acknowledged that the concept of taxable income does not include all receipts even though such receipts were not specifically excepted from taxable income by statute. The Commissioner has ruled that income did not include damages for alienation of affections,[1] damages for breach of promise to marry,[2] an award under a wrongful death statute,[3] and payments to war prisoners for mistreatment by their captors.[4] Despite the absence of express statutory authority, the Commissioner has refused to subject to income tax the receipt of retirement benefits paid under the Federal Old Age and Survivors Insurance System,[5] unemployment compensation benefits paid by a state,[6] and public assistance relief payments.[7]

77

Public assistance benefits which have been ruled not to be taxable also provide an analogy to strike benefits. Both provide relief to the indigent. Strike benefits are intended to prevent want as are public assistance benefits.

In 1952, the Commissioner ruled that receipt of food and medical supplies and other forms of subsistence from the American Red Cross by a disaster victim did not represent taxable income.[8] About a year later, the Commissioner ruled that rehabilitation payments made to victims of a tornado disaster from a special fund set up by a large employer in the area for the benefit of his employees and their families "do not come within the concept of gross income under the provisions of § 22(a) of the [1939] Code."[9] The Commissioner emphasized that the contributions were measured solely by need.

We hold that the strike benefits received by plaintiff under the facts of this case are not taxable income. The question as to whether such benefits received under other circumstances might constitute taxable income is, of course, not presented on this record.

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[1] I.T. 1804, II-2 Cum. Bull. 61 (1923)
[2] G.C.M. 4363, VII-2 Cum. Bul. 185 (1928)
[3] See I.T. 2420, VII-2 Cum. Bull. 123 (1928)
[4] Rev. Rul. 55-132, 1955-1 Cum. Bull. 213
[5] I.T. 3447, 1941-1 Cum. Bull. 191
[6] I.T. 3230, 1938-2 Cum. Bull. 186
[7] Rev. Rul. 57-102, 1957-1, Cum. Bull. 26
[8] Spec. Rul. of I.R.S., 5 Stan. Fed. Tax. Rep. § 6196
[9] Rev. Rul. 131, 1953-2 Cum. Bull. 112

In any event, the strike benefits received by plaintiff were gifts which are expressly excepted from taxable income by § 102, Internal Revenue Code of 1954. There is substantial evidence in this record to sustain the finding of the jury.

78 In United States v. Burdick, 3 Cir., 214 F. 2d 768, 771, the Court said: "As we held in Smith v. Manning, 1951, 189 F. 2d 348 whether the receipts are gifts is primarily a question of fact * * * "

The trial court adequately submitted the question of gift to the jury. Excerpts from the court's instructions are as follows:

> "Compensation for refraining from labor is taxable income * * * ";
>
> "If it was the intention of the Union to pay for services, these payments are income";
>
> "If these payments were made by the Union because of any obligation, either legal or moral * * * then the payments were not gifts and you should answer the question 'no' ";
>
> "If the payments were made as compensation for services, even though the Union did not consciously have that intent, they constitute income and not gifts."

After listening to and considering these instructions, the jury found that the strike benefits received by plaintiff were gifts.

In overruling and setting aside the verdict of the jury, the trial court was of the view that the strike benefits were made available to plaintiff pursuant to a moral obligation of the International Union to its members. However, the Union surely did not owe an obligation to plaintiff. He was not a member of the Union for four and a half months after the strike began, and yet he received strike benefits. Furthermore, there was testimony which the jury was entitled to believe that it was discretionary with the Union whether any strike benefits were to be distributed.

The second basis for the District Court's decision was that the Union exacted continued participation by plaintiff in the strike in return for receiving strike benefits. In other words, the Union, by giving plaintiff strike benefits valued at about $17 per week, for a period of eight months, has exacted from plaintiff his continued participation in the strike and abstaining from work which previously netted him $166 a week.

The answer to this contention is that if plaintiff, while remaining on strike at Kohler, had found temporary employ-

ment elsewhere, his strike benefits would have ceased.
79 The same would have been true if members of his family had found employment, because the basic condition of receiving benefits was the present need of the plaintiff.

It seems clear that the strike benefits which were paid plaintiff were completely unrelated to his former earnings. The factor determining the amount of benefits paid to him was his personal need, his marital status and the number of dependents. The benefits were given because he and his family were in need after he ceased working. Such payments were consistent only with charity. We hold they were gifts and were not taxable.

The District Court placed reliance on O.D. 552, 2 Cum. Bull. 73 (1920) in which the Commissioner ruled that "Benefits received from a labor union by an individual *member* [emphasis supplied] while on strike are to be included in his gross income * * *." Although little if any attention seems to have been given to this obscure ruling from 1920 to 1957, the learned trial judge stated it must be held to have received Congressional approval and to have assumed the force and effect of law.

This 1920 ruling did not cover strike benefits paid by a union to non-members or to a situation where a union paid strike benefits to both members and non-members alike. In any event, the so-called reenactment doctrine is more properly applied to regulations, which have the force of law, than to rulings.[10] It has been said the rules have "no more binding or legal force than the opinion of any other lawyer." [11]

Significant also on the weight to be given to this 1920 ruling is the statement of the Supreme Court in the late case of Commissioner v. Glenshaw Glass Company, 348 U.S. 426, 431 "* * * Re-enactment—particularly without the slightest affirmative indication that Congress ever had the Highland Farms decision before it—is an unreliable indicium at best. * * *" This statement is particularly appropriate here, as the Government has made no showing that the 1920 rule was even considered by Congress.

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[10] Bartels v. Birmingham, 332 U.S. 126, 132.

[11] United States v. Bennett, 5 Cir., 186 F. 2d 407, 410.

Reversed.

80 KNOCH, *Circuit Judge*, dissenting. As indicated in the opinion of Chief Judge Duffy, the sole question here presented is whether strike benefits received from a union by a striking worker are taxable income to him.

Chief Judge Duffy concludes that the benefits received are nontaxable gifts. After careful consideration of the case, I regretfully find myself unable to agree.

It is true that the plaintiff, a non-member of the Union, was given strike benefits only after he had shown himself to be in need of food, clothing and shelter. The amount of aid given was based, not on his former earnings, but on his personal need, marital status and number of dependents. Such benefits would not have been given, or would have terminated, regardless of his continued participation in the strike, had his need ceased to exist through receipt of income from any other source by him or a member of his family.

However, his need was a secondary qualification to which consideration was given only after he had met the primary qualification: participation in the strike. Had he not met that primary qualification, he would have received no benefits. Had he ceased to meet that primary qualification, his benefits would have terminated notwithstanding the extent of his personal need, or whether he was a member of the Union or not. The fact that these benefits were paid to members and nonmembers alike emphasizes the real reason for payment, namely, either class must be in necessitous circumstances, but, above all, must be on strike.

The District Court clearly indicated that the case was allowed to go to the jury only to present a full record on appeal.

Determination of the character of the strike benefits presented a question of law. All the facts, including the Union's motivation and intent, were fully disclosed by stipulation of facts and uncontroverted testimony. Bogardus v. Commissioner, (1937) 302 U.S. 34, 58 S.C. 61, 82 L. Ed. 32; Old Colony Trust Co. v. Commissioner, (1928) 279 U.S. 716, 49 S.C. 499, 73 L. Ed. 918.

The Union did require consideration for the strike benefits bestowed on plaintiff. It was stipulated by the parties:

81 "The International Union grants strike benefits to non-members of the Union, who participate in a strike, if they do not have sufficient income to pur-

chase food or to meet an emergency situation. The Union treats such non-members on the same basis as members of the Union, but non-members as well as members must be strikers before they may receive assistance from the Union."

The Court instructed the jury that compensation for refraining from labor is taxable income. The majority opinion holds that this was a question to be resolved by the jury. In the light of the stipulated facts it is my opinion that there was a question of law only, and that no factual issue remained to be presented to the jury.

I would affirm the District Judge's ruling that " 'viewing the evidence and all reasonable inferences that may be drawn therefrom in the light most favorable to plaintiff' (citing cases) as a matter of law the strike benefits constituted taxable income and not a gift."

The District Court inferred Congressional approval from repeated re-enactment of the applicable sections of the Code, in the light of the 1920 ruling (described in the majority opinion) and 38 years of consistent administrative interpretation and practice. As many persons who have paid a similar tax are said to be awaiting the outcome of this cause, a policy question exists s to the advisability of making strike benefits tax free.

This dissent having been predicated on a totally different ground, however, these matters are not reached.

82 In United States Court of Appeals for the Seventh Circuit

Before Hon. F. RYAN DUFFY, *Chief Judge*, Hon. J. EARL MAJOR, *Circuit Judge*, Hon. WIN G. KNOCH, *Circuit Judge*.

No. 12317

ALLEN KAISER, PLAINTIFF-APPELLANT

vs.

UNITED STATES OF AMERICA, DEFENDANT-APPELLEE

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF WISCONSIN

Judgment—December 22, 1958

This cause came on to be heard on the transcript of the record from the United States District Court for the Eastern

District of Wisconsin, ———— Division, and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this court that the judgment of the said District Court in this cause appealed from be, and the same is hereby, reversed, in accordance with the opinion of this Court filed this day.

83 Clerk's certificate to foregoing transcript omitted in printing.

84 Supreme Court of the United States

[Title omitted.]

Order extending time to file petition for writ of certiorari—March 19, 1959

Upon consideration of the application of counsel for petitioner(s),

It is ordered that the time for filing petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including

April 21st, 1959.

HUGO L. BLACK,
Associate Justice of the
Supreme Court of the United States.

Dated this 19th day of March 1959.

85 Supreme Court of the United States

[Title omitted.]

Order allowing certiorari June 1, 1959

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit is granted. The case is transferred to the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

U.S. GOVERNMENT PRINTING OFFICE: 1959